

OF
OATHES:
THEIR
OBJECT, FORME,
AND BOND:

THE
PUNISHMENT OF
PERJURY,

AND
THE IMPIETIE OF PAPALL
DISPENSATIONS.

Delivered in three Sermons in *Oxford*, to the Vni-
uersitie; by *Christopher White*, B. of Divinitie,
and Student of *Christs-Church*.

Peierare immane peccatum est. Aug. Ep. 154.
Falsa iuratio exitiosa est, vera iuratio periculosa, nulla
secura. Aug. de Verbis Apostoli, ser. 28.



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TO
THE TRVLV-NOBLE,
WILLIAM, Earle of
Hartford, &c.

Right Honourable,



If your Honour can with patience heare, I can, without the guilt of flattery, say, As you are the Heyre of your memorable Grandfathers Honours, so are you of his vertues. For it is the singular Honour of your Lordship, to see the execution of Patere. li. 2;

*those duties in your Family, which he was wont to commend to his; and to leade your seruants, as hee did his, by your owne example. It was his vsuall charge to his seruants, that they should haue a care of their seruice, first, due vnto God; next, to the King; then, to himselfe: so valuing these seuerall duties, as that hee accounted him vnfit to bee employed in the last, that failed in the former. And in those two former duties, accounting himselfe as their fellow-seruant, he was vnto them a daily patterne of the performance of their seruice due vnto God, and gaue them and the world many testimonies of the loyaltie due vnto their King. What your Honours affections are in each of these, wee of your Familie know, and enioy the blessing of them: and I from
thence*

*Faciendo
doces.*

The Epistle Dedicatorie.

thence am encouraged to presume of your Honourable Patronage of this Discourse, as meane as it is, because it treates of Oathes, which are Gods honour, and the Kings Guard: and I haue therein endeououred to preserue the first from worldlings abuses, by blasphemies and periuries; and the other from Popelings underminings by pretended Heresies and Dispensations. But whereas, from your affection to reading, I may presume, your Lordship will peruse it, and from your knowne iudgement in reading, I must expect, you will discover many defects in it: I must entreate your Honour, and all that reade, to consider, that I was limited by a Text; and pardon my haste to discharge my selfe of it, who was willing rather to publish mine owne imperfections, that I might shew my Zeale for Gods glorie in this cause, and excite others who are more able, to a more exact discourse of the same subiect, then to expect mine owne enlargement of this. Thus, praying God for a blessing to these mine endeuours, and your Honours good affections, I remaine,

Your Lordships
in all duty,

CHRISTOPHER WHITE.

THE



THE OBJECT, FORME AND BOND

of Oathes : in what cases they
bind, in what not, and of

DISPENSATIONS.

IOHN 9, Chap. 9. Verse 19.

*Wee haue sworne vnto them by the Lord God of Israel:
now therefore we may not touch them.*



His Text considered with its circumstances,
affoords many worthy Obseruations : a-
mongst which, I haue taken notice onely of
the Oath ; to the end we may enquire into
the nature and condition of that, which
hath so diffused it selfe throughout humane

affaires, that (as *Tholosanus* obserues) there is scarce any pas-
sage, in which *de iuramento queri non possit, & periurio*. Yet
so farre only shall I enquire after the generall, as this particu-
lar shall conduct me.

Greg. Tholos.
Syntag. l. 50.
c. 2.

My Text offers vnto vs two things :

1 The Oath it selfe, in these words, *Wee haue sworne by
the Lord God of Israel* : which giues occasion of enqui-
ring after two things : First, the *Object* of an Oath ;
whose name is to bee vsed in an Oath. Secondly, the
Forme of proposing an Oath.

2 The *Bond* of it in these words, *Now therefore we may*

An Oath must be framed

not touch them. Concerning which, I conceiue three points necessary to be handled: First, the *validity* of the Bond; It may not be broken. Secondly, An *enquiry* whether this bond holds in all cases, in what not; and particularly, whether in this of the Gibeonites. Thirdly, another *Quare* (vpon supposall of force of it in it selfe) whether it may be dissolved by *Dispensation*, or otherwise.

The Oath: Wee haue sworne by the Lord God of Israel.

AN Oath most suteable to those that tooke it, most answerable to their expectation to whom it was made. Nature taught them to include a *God* in their oath; Religion, the *Lord God of Israel*. To haue sworne by a *God*, might haue left the Gibeonites in suspēce whether it were the God they honoured, because of the diuersitie; whilest by the *Lord God of Israel*, they are ascertain'd of the bond of their Oath; because he was knowne to be the God of the Israelites. The Israelites *swear*, the Gibeonites are *assured*: we haue a patterne both of *gining* and *taking* assurance by an Oath, that it must be in the *Name of the Lord*. For (that I may not lay a presumptuous command on your beliefe, from a single example of practice,) it shall appeare vnto you from the grounds of this example, that *An Oath is to be framed in the Name of the Lord*.

Nature hath dictated this Maxime to all her children, and kindled the light hereof in Cells, most remoued from supernaturall light, (though they haue depraued it in the applying, from their misconceiuing of this Deitie.) Hence the Romanes, in their solemne Oathes, taking a stone, were wont to say, *If I meane and doe truely what I promise, Iupiter be prosperous vnto mee: If not, let mee be cast out of all my fortunes, as I cast this stone from mee*. The Carthaginians holding a Lambe in one hand, and a flint in the other, and then with the stone killing the Lambe, prayed the Gods to doe so to them, if they failed in their promise. The Quadi of ancient Germanie sware by their swords, which were to them their Gods:

Gods : and the Argiles of Africa by Ships, which they reputed as Gods. All, though sometimes by creatures, according to the truth, yet by the true God, in their conceipt.

Whence Aristotle describes an Oath to be *μετὰ θεῶν μυστήριον*. And Tullie, (whether from him, or iumping with him) *Iusiurandum est affirmatio religiosa*. An Oath, according to them, is a speech uttered with religion, and reuerence of a Deitie. For so Tullie plainly expresseth himselfe: *Quod affirmatè quasi Deo teste promiseris*: saying, that in the oath thou dost positively call God to be a witness of what thou promisest. Arist. Rhet. c. 18. Tul. offic. l. 3.

Had not Nature displai'd this in the practice and testimonies of her followers, we might from other principles, entertained by all, euince this truth. For first, an Oath is held for the most pregnant prooffe of a doubtfull truth, the last refuge of confirmation, held by all inuiolable (as shall anon appeare.) But the Scripture hath giuen man his Motto, *Omnis homo mendax*: Every man is a liar. Yea (that the argument may proceed in eodem genere, the Heathen hath displai'd him to be the patterne of weakenesse, the prey of time, the picture of uncertainty. The contemplation of whose ignorance (and therefore of error) made another cry out, Aristot.

Proh superi, quantum mortalia peccata cæcæ

Noctis habent! —————

What hopes then can there be from him in himselfe, of certainty in his word, who is the subiect of mutabilitie? But when hee sweares, hee hath (as much as in him is) renounc'd himselfe, assum'd for his surety in his Oath the moderator of all changes; for the infallibilitie of his promise, truth it selfe.

Againe, the harmonie of the mind with the words of him that sweares, is not to be discover'd by any but the all-seeing God. Of him could Thales say, (being demanded whether a man, doing ill, were vnseene of the Gods, αἰὲν οὐδὲ διαόμμεται, no nor thinking ill. His witness therefore must needs be had for the testifying of that, which cannot else be made known. The necessity of discovering the darke Labyrinth of mans heart, and hauing an infallible testimonie in that last of his

Oath, makes Nature and reason require a *Deitie* as an assistant, in whose name, and by whom all is to be tryed.

Deut. 6. 13.

Isa. 45. 23.

To those who haue gone a step farther, and are admitted to the hearing of truly religious Oracles, God himselfe declareth his interest he hath in an Oath: and commands them on their allegiance to name him. *Thou shalt feare the Lord thy God, and serue him, and shalt sweare by his Name.* And in the 45 of *Esay*, hee doth (as it were) contend for it, as his prerogatiue, which hee vowes to make all the world acknowledge, saying, *I haue sworne by my selfe, the word is gone out of my mouth, and shall not returne, that euery knee shall bow unto mee, and euery tongue shall sweare by mee.* A iust claime, since so great honour is attributed to the thing, (by which an Oath is made) as belongs to the *immortall, infallible, all-seeing, omnipotent, onely true God.*

Ambros. l. 5.
Ep. 30.

Giue eare thou, whose prodigall tongue hath spent thy wits variations of Oathes in *Gods name*, or loathes such often repetitions, and now is nimble in the varietie of creatures, and forbears not to sweare by the *Heathens Gods*. Doth the Lord command thee to sweare by *his Name*? and wilt thou reiect it? Doth hee contend with the Nations for this honour? and wilt thou, one of his people, despoile him of it? Though it be but in thy sports, and customarie language, (wherein thou hast no warrant to vse his Name, yea an expresse prohibition, though for a truth) yet heerein hast thou deeply offended, transferring those dignities of *avouching the last truth* (which belong onely to him) not onely to his creatures, but to *Gods*, who are no Gods, yea are abhorred of thy *God*. Wilt thou know the nature of thy sinne? It is *Heathenish Idolatrie*. *St. Ambrose* is my surety for it; *Quid est iurare nisi eius, quem testaris fidei tue prasulem, diuinam potentiam confiteri?* Thou wilt not disparage thy selfe by accounting these no Oathes: therefore thou art an *Idolater*, giuing diuine power to heathen Idols: yea, a greater Idolater then were the Heathen. They tooke these to be Gods, true Gods, and therefore might yeeld that reuerences: thou giuest diuine reuerence to those thou accountest no Gods.

This

This concernes those also, who, though they vse more deliberate iudgement in swearing, yet thinke nothing amisse, if, vpon vrgency, they seale their faith by the Name of *Heaven*, the *light*, or the like.

Not all the Papists forces are able to guard them, nor all their subtile shifts can procure a sure euasion of this danger: but that the frequent *attesting* of the *dead Saints*, the *Crosse*, the *holy Rood*, &c, shall appeare one day registred in the Role of their Idolatries. For, if it be Gods honour, (as they themselves confesse) it may not be applyed to the Creature.

But since this sinne is of that high nature, and yet haue there beene audacious multitudes, that maintaine a lawfulnessse of swearing by *creatures*; and we our selues, who most oppugne it, admit in some cases the naming of *creatures* in our Oathes; wee may not let this passe vntouched.

We are content to be of that number in *Suarez* *conclusion*, *It is certaine, and receined of all, posse aliquo modo vere & licite, that we may in some sort truly and lawfully sweare by the creatures.* But we then build on that receiued distinction of an Oath, that there is 1. *Iuramentum per Attestationem*, or *confessionem* (as *Aquinas* calls it,) which some call *Iuramentum simplex*, wherein one is called to the witnessing the truth of what is spoken. 2. Secondly, there is *Iuramentum per Execrationem*, (which some call *Iuramentum compositum*) wherein something is bound to vndergoe the punishment of the periurie: as when men (too often) binde both body and soule to hell fire, if they speake not the truth. This later is agreed by all sides, to bee framed in the name of some *creature*, (though improperly, if well examined; but I rest in it for this present) the difference is about the former. Whether any *creature* may be assumed in it, as a testimonie of what is spoken? Wee vtterly renounce it. The Papists themselves see difficulties in the affirmative, and therefore they (who would deale most warily) frame these diuers considerations of the creature, that it may bee considered, 1. *Absolutely, as it is in it selfe.* Secondly, *In ordine ad Deum, with reference to God.* And of the Oath, that it may be

Suarez de Iuran. l. 1. c. 5.

Aqui. secunda secunda, q. 89. ar. 1. ad. 3.

Aqui. secunda secunda, q. 89. ar. 6. in Corp.

Custom.

Suarez.
Tert. apol.
aduers. gentes.

be referred to the creature, *Principaliter, vel Secundario*: from whence *Suarez* frames this conclusion, *Certum est iuramentum per falsos Deos, &c.* It is certaine, that an oath made in the name of false Gods or creatures, as they are absolutely considered, is no oath. And therefore in the necessarie consequence he ioynes issue with vs, and holds that the creatures may not be the assurance of an Oath. But hee workes another position: That an oath may be made by the creatures, as they are considered with reference to God, and haue in them *Imaginem Dei relucentem*: To this hee stands stiffely, and makes a faire shew of firme ground whereon hee stands. I cannot stay to discusse the particulars of his affirmatiue prooffe. Some places of Scripture vrged, consent not to his sence, as that *By the life of Pharaon*, according to *Aquinas* his exposition, otherwise applyed by the Fathers. The maine (for ought I can perceiue) is *Custom*; the onely argument that *Aquinas* had for it in his dayes, and therefore may, by the continuance till this time, be sufficient. A weake plea in a point against such pregnant places of Scripture shewing the danger of such a practice. And this custome seemes rather to haue risen vpon a mis-interpreting of the ancient practice, then true custome. So that the solemnity of laying hands on the Bible at the time of swearing, is taken to be the swearing by the Bible. I see no other ground of it. For the substance of their Oathes was otherwise, as shall presently appeare. Nor doth *Suarez* produce any euidence of custome, but onely, that *Tertullian* saith, the Christians did swear by the life of *Cesar*, (which, if warrantable, comes vnder the Oath of *Ex-ecration*;) and a forme of *Pius* the 4 his Oath, with which he sealed the profession of his faith which he made, saying, *Ego ita spondeo, voueo, ac iuro, sic me Deus adiuet, & sancta Dei Euangelia: Thus do I promise, vow and swear as God shall helpe me, and the holy Euangels.* The Popes practice against vs is no plea. Yet might I acquit *Pius* from the crime, (with which I should charge him, according to *Suarez* his exposition) by denying that forme of swearing to imply any attestation of the creature.

Not lawfull to sweare by the creature.

7

In the *negative* he is very bold, and forbears not to say, Suarez. that this maner of swearing by the *creature*, is not prohibited by any *Diuine* or *Humane Law*. Indeed, were the places urged against it, as easily answered as he shifts them, we might yeeld. But the Law *Diuine* and *humane*, in expresse termes, not to be defeated, prescribe against *swearing by creatures* at all, by way of *inuoking* their testimonie. Christ in the 23 of *Matthew*, acknowledging the resemblance of God in his creatures, and that the oath made by them, redownds to their Creator; (*For he that sweares by the Temple, sweares by it and him that dwelleth therein; and he that sweareth by heauen, sweareth by it and by him that dwelleth therein:*) Yet in the 5 Chapter hee forbiddeth to sweare either by the *Temple*, or *Ierusalem*, or by the *heauen* or the *earth*; not abrogating the Oath to be made by his owne Name, but not suffering his honour to be translated to his creatures. For, as Saint Hierome saith; *Qui iurat, aut veneratur, aut diligit eum per quem iurat: Hee that sweares by any thing, either loues or adores that by which he sweares:* And he affirms the first of the Iewes, that swearing by *Angels*, the *Temple*, the *Citie of Ierusalem*, and the *Elements*, they gaue them the reuerence due to God. Matt. 23. 21, 22. cap. 5. 34.

The *Humane Law* is extant in the Canon Law, which en- Cauſa. 22 q. 1. ioynes sharpe reprehension to be vsed on a Clerke that shall Can. Clericu. sweare by *creatures*, yea excommunication, if he persist in it. And againe, *Si quis*, If any man shall sweare by a creature, let Can. Si quis. him be censured as the Synode thinkes fitting.

It is but an idle and vaine shift of Suarez, (though borrowed from *Aquinas*) to blot out these Decrees, by saying these prohibitions were only to auoid Idolatrie. For, taking Idolatrie in his sense, for a *primarie honouring of the creature*, he can no more argue the Iewes then guilty of it toward their Temple, then his Romanists now toward their Church of Rome: and indeed he forbeareth not to condemne those of his owne Synagogue, yea, of the Clergie in former times, of the like Idolatrie, when those Canons were made. That we may then follow him, Whence grew this Idolatrie in the Church of Rome? Was it not from the esteeme of those crea-

The Forme of an Oath.

creatures *in ordine ad Deum*? whilest they stroue to reuerence them *for* God, they worshipped them *as* God. Neuer was there Age wherein these *holy things of Temple, Crosse, Reliques, &c.* were embraced with that zeale and feruencie, as they are now at this day in the Church of Rome: therefore neuer fitter, that these old Canons should bee reuiued, for the abolishing of that religious worship of swearing by these creatures.

And now that I may reflect vpon our selues: I cannot but maruell, that some, euen of those that haue renounced Rome, ioyne with them yet in approouing these *oathes by creatures*, not in words onely, but in writing. For, to *swear*, hath beene throughout the world accounted a most religious worship: and therefore to maintaine this to be giuen to the *creatures*, is to allow Idolatrie, more open Idolatrie then that of humbling themselves before stockes and stones. For in that cause they of Rome keepe off all arguments with the distinction of their worship: that they honour them not *cultu latris*, but onely *dulcis*: but in this honour giuen by an Oath, I finde not any that desires to hide his reuerence of the creature vnder the terme of a *ciuill worship*, but professeth it to be *cultus latris*, the selfe same reuerence that is giuen to God.

If we will then be free from Idolatrie, in this seruice of God we must exclude all creatures, and (as the Israelites in my Text) swear by the *Name of God*. But in what manner, we are to seeke in the second place.

The forme of the Oath.

WE haue by the Israelites exemplarie direction sound by whom we may safely swear: but haue no pattern and forme of words according to which the Oathes are to bee proposed. For in what precise termes this Oath of theirs was framed, we may rather coniecture then determine. Yet need we not wander in our coniecture, if *Hales* obseruation, and diuers others since him be true. He findes but 2 formes of oathes, framed by God, vsed by the Israelites in the Old Testa-

Three evils reigne in man.

9

Testament: the 1, *Viuit Deus*, the Lord liueth; or as the Lord 2 Sam. 15. 21. liueth. 2, *Hoc faciat mihi Deus*; God doe thus or thus vnto me. In either of which there might haue beene assurance giuen to the Gibeonites: but (if I may presume to name whether they vsed) it is most likely the latter, since men thinke their bond then most firme, when the bounden expresse the penal- tie that they expect vpon their non performance.

Be it either; we are not bound, as in the *Obiect* to name God, so heere to the *strict formes* of naming him. For in the New Testament the same Author finds another manner of pronouncing an Oath, as, *Testis est mihi Deus*. The cause of which diuersitie was from diuers misconceits of the true God, bred in the hearts of men, For (saith *Hales*) Before the comming of Christ, 2 evils raigned in the hearts of men: as first, *Idolatrie*, against which was framed this forme of swearing, The Lord liueth. Secondly, there was commonly amongst them *Ignorantia Iustitie*, ignorance of Gods Iustice: Against which, to make knowne Gods Iustice, those who serued him, expressed it in this forme, God doe thus and thus to mee. After Christs comming, there was *Incredulitas*, a backward- nesse in beleeuing his comming; and therefore his Apostles vsed this protestation, *Testis est mihi Deus*, God is my witnesse, who by his miracles testifieth his owne truth and presence.

In all of them, there is *Reuerentia prima veritatis*, reue- rence giuen to the first truth, and therefore all warrantable. For so farre forth onely is it lawfull to varie in the forme of swearing, as that still the *prime truth*, [God,] in whom re- sides all truth, bee attested for maintaining of truth. And this truth may be honoured foure wayes. For (according to *Hales* matter, but *Bonaventures* more neate forme of propo- sing it) God, who is the originall truth, is

- | | | |
|---|--|---------------------------------------|
| <p>mentioned,
either as hee
doth denote
habitudinem</p> | <p>1. <i>Praecipientis</i>, as he is the rule and command of all truth, which is declared in these words, By God.</p> <p>2. <i>Praecipientis & cognoscentis</i>, as hee is the fountaine and discernor of all truth; ex- pressed thus: G O D is my witnesse.</p> | <p>Bonav. in 3.
d. 39. ar. 3.</p> |
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C

G O D

The odious blasphemies of common swearers.

G O D knowes I lye not.

3. *Retribuentis respectu bonorum*, as hee is the true rewarder of goodnesse; expressed in these termes (as they say) *Viuuunt Dominus*, *The Lord liueth*, who giueth life and goods to the good.
4. *Retribuentis respectu malorum*, as hee is the rewarder of the wicked; expressed in these termes: *God doe thus to me.*

There are these 4 wayes of honouring God in the avouching of truth by his Name, and no more. And therefore *Hales* concludes, and wee may build vpon his conclusion, *Sunt tot forme iurandi, & non plures*: There are onely these formes of swearing by God. Not euery naming of God by way of oath, makes a lawfull Oath, but onely when he is named and honoured as truth.

In Authent.
Vt non luxuri-
entur. col. 6.

What shall I say then of that wantonnesse and luxurie of swearing too frequent amongst vs, wherein God is named, but not in truth, but his heart, his body, his blood, flesh, nayles, and such like, are called to testifie? These are high Blasphemies, so odious in the eares of ancient Christians, that the Ciuill Magistrate thought it concerned him to restraine. And therefore *Iustinian* declared the sentence of death against such offenders. It may seeme a strange Decree in these daies, wherein not only the generalitie of the practice hath countenanced the rudenesse of it, but the silence of Diuines becomes an abettor of it. But examine the Emperours proceeding, and yee shall finde it proceeded not from harshnesse of nature, but tendernesse of his peoples safetie, and hainousnesse of the crime. He is there a *Preacher*, before hee turnes *Iudge*; giueth earnest admonitions, before hee threatneth; sets before his people Gods Iudgements, before he giues his owne; nor giues his owne sentence, till they are vnworthy of mercie, and the liues of some Blasphemers threaten the ruine of the whole Common-weale. His preface to his Law is, *Omnihus hominibus, qui rectè sapiunt, &c.* Wee presume it is manifest to all understanding men, that our whole studie and endeouours

The ciuill punishment of swearers.

II

endenours are, that those whom G O D hath committed to our charge may liue well, and in Gods fauour, wherefore we inuite all men to haue a due reuerence of God, and to labour for his fauour. Hauing thus prefac'd, he names the crimes against which he is to proceed, which are two: 1, Vnnaturall lusts, 2, Blasphemie: fit yoke-fellowes; the one being repugnant to nature, the other to God. Concerning this later, (which only pertaines to our present purpose) hee goes on: *Et quoniam quidem, &c.* Since there are some blasphemous swearers, thereby prouoking Gods wrath, wee command them to forbear these and the like blasphemous oathes, by Gods haire, head, &c. For if blasphemies against men goe not unpunished, much lesse should those against God. Wherefore wee command all men to abstaine from such crimes, and to haue the feare of God before their eyes: For for these crimes come famines, earthquakes and plagues: and therefore we warne them to abstaine, that they destroy not their owne soules. If any after this admonition continue in such sins, they first exclude themselves from Gods mercy, and then become subiect to our Laws. Here be Iniuinctions and Commands, but mixt with perswasive reasons, as if hee would rather perswade then command; and make them rather willing to detest, then force them to abandon Oathes: and therefore his *Iniungimus & Pracipimus*, we Enioyne and Command, are turned into *Admonemus*, we admonish such to abstaine. But when neither the hainousnesse of the fact, nor the high dishonour of God, nor the priuate nor publike plagues that attend the crime, nor the commanding admonition of him that might stop vp these blasphemous mouthes, can keepe them from blaspheming, What can be expected, but that by a speedy Iudgement on the offenders, he should cut off those sinners, which he thinkes would draw downe vengeance from heauen vpon the whole Common-weale? and therefore hee adds, *Pracipimus gloriosissimo regia ciuitatis praefecto*; We command the chiefe Iudge of our Imperiall Citie to apprehend such malefactors, and to put them to death. And, hauing pronounced the sentence, he becomes so carefull for the execution of it, that he addes this clause to the Iudge: *If hee shall suffer any*

The ciuill punishment of swearers.

such to goe unpunished, hee makes himselfe liable to Gods Iudgement, and shall feele our heauy displeasure. Death, and nothing but death he accounts a punishment answerable to such a crime. For which if any man challenge him of rigour, let him looke into the 24 of Leuiticus, and hee shall finde, that the sentence is Gods: Hee that shall blaspheme the Name of God, shall die the death.

Levit. 24. 16.

I vrge not the re-establisshing of these; but wish, that Canon Law were in force, and the punishment inflicted, *Si quis per capillum Dei, &c.* If any man sweare by the haire and head of God, or vse the Name of God in any other such like blasphemous speech, let him be degraded, if a Clergie man: if Lay, let him bee Anathematized, that by this punishment they may know the hainousnesse of such oathes, and liue to repent for them. Yea, and let the clause of the Canon for the execution of it, be in force, *Acerrimè corripatur*, Let the Bishop, or hee to whose charge this punishment is committed, vpon neglect of it, be most sharply censured.

Causa. 22. q. 1.
Can. Si quis.

It concernes yon, whosoever you are that haue this authoritie, to stop the mouthes of such Blasphemers. For if it bee true in that Canon *Si quis*, that, for him who shall conceale such Blasphemies, *non est dubium quin diuinâ condemnatione coerceatur*, no question but iudgement and reuenge hang ouer his head, who knowes God to be thus blasphemed, and lets it passe without controule, when he may punish.

Par. in Gen.

42.

Basil. in Psal. 14.

Where there is not this impious extrauagancie in swearing, either by such Blasphemies, or Attesting of the creatures, it often fals out, that speeches vsed among men, both in priuate and publike, carry not any of those outward formes, wherein we haue before bounded the lawfulnessse of an oath. If they be *Assenerations*, and haue no resemblance with those formes, I will not grinde on mens consciences, and damne them presently for impious swearing; but say according to the trnth (if time would giue leaue to scanne it) vnder the conduct of *Pareus* and *St. Basil*: and in *St. Basils* words, *εἰσὶ ὅτινες λόγοι ἡμίμαλα μὴ ὀρκῶν ἔχοντες, ἐκ ὀρκῶν ὅντις ἀλλὰ δεσποῦσιν πρὸς τὸ ἀκούοντας.* There are some speeches, which at first seeme

An ancient custome of swearing by the life of the King.

†3

to bee oathes, when as indeed they are not, but onely most earnest protestations, (as he saith) remedies to cure, as it were, the dullnesse of belceuing in the hearer. And yet I hold not all which they account vnder that stile, to bee so; but rather truely Oathes: as for instance, that of Ioseph, *By the life of Pharaoh.*

Againe, if they appeare as Oathes being so; (though not according to one of those 4 formes *quoad ipsam verborum formam*,) they are not to bee reputed as vnlawfull. For in those formes, there is not so much respect had vnto the termes as the sence. So in these speeches, *By the life of Pharaoh*, the vsuall oath of Egyptians, and vsed by holy Ioseph: *By the life of Caesar*, an Oath frequent among the the Primi- Tert. Apolog. c. 32.
tue Christians (as Tertullian saith;) *Per salutem meam*, an Oath (as it seemes) by the Ciuill Law very common heere- tofore; if we will not be rigorous in expounding them according to the letter) they come not vnder the head of oaths of Attestation, but of Execration, and so haue reference vnto God, as he is true in punishing: beeing æquiualent to these termes, *As God shall preserue the life of Pharaoh and Caesar; as I expect saluation from God.* For so the Emperour, he that sweares *per salutem suam*, seemes to sweare by God, for with reference to God he sweares by it. How so, but onely by exposing it to Gods curse if he speake not the truth? F. de iureiurando. l. Qui per salutem.

Indeed there the Emperour reckons not that a sufficient Oath, though it be with reference to God, and makes it void, vnlesse God be named in it. There the cause is speciall; but in all publike solemne acts, especially in Law, strict termes are precisely obserued, and all ambiguities preuented. Whence wee in our Realme, (howeuer our priuate Oathes vary) in all solemne obligations for speaking of the truth, and obseruing of Statutes, haue an expresse forme of naming God, knowne to euery man. But yet in this there are termes sometime annexed, which may breed some scruple: as when to *Sicut Deus te adiuuet*, is added, *et sacro-sancta Euangelia Dei*, which in the English is more warily administred, when the Oath is sometime giuen thus, *So God thee helpe, and the*

Contents of this Booke. Yet heere it may be questioned, whether wee sweare not by the *litterall Gospell*, and so fall into that, which I before condemned in the Papists.

If I may be bold, I thinke it needs an interpretation, and may not be meant of the *litterall Gospell*, but the *substance* of it: not the *written Word*, but *Hypostaticall Word*, the *Sonne of God*. It is not mine owne interpretation, but the iudgement of *Wesembeckius* on the like occasion: and the forme of the Oath in our English expresseth it, when it is said, *So God thee helpe*, and the *Contents* of this Booke, not the *Booke*.

To these formes of Oathes are added other outward solemnities: so *Abrahams* seruant, when hee sware to his Master, put his hand vnder his thigh: and *Daniel* makes mention of an Oath with the *lifting up of both hands to heaven*. The ancient Christians were wont to sweare, laying hold of some *Martyrs Sepulchers*, or the *Altar*. *Iustinian* instituted the *touching of the holy Euangels*, a Ceremonie generally obserued in Christendome, and most laudable. But we must beware of the Lawyers glosse, both Ciuill and Canon, on this ceremonie; lest by their warrants wee cast our selues into the guilt of periurie before God, whilst they in their Courts interpret vs not sworne. For it is a question amongst them, whether it be necessarie, that in swearing, the *Euangels* or some other *sacred thing* is to be touched: which being affirmed by some, and the words spoken, without this outward action, held for no lawfull Oath, some men shifting the touch of the Booke, may think themselves free to speake what they please; and from such opinions, frame to themselves a plaine conclusion of flat periurie.

We must heere distinguish betweene *Iuramentum Iudiciale* & *Extraiudiciale*; not (I confesse) according to their acception; which I render, an *Oath of Court*, and an *Oath of Conscience*: this later is taken vpon the approbation of the words spoken, though thou neuer touch the Booke; and bindes before God vpon paine of periurie, though thine Oath thus taken be not accounted a *Iudiciall Oath*. That which is wanting, is onely an *accidentall forme*, and pertaines not to the
vertue

Gen. 24. 2.

Dan. 12. 7.

Grég. l. 5. ep.

33. in Authét.

de Instrument.

Cant. § Et-

enim. col. 6.

Vid. Farinac.

part. 6. de fals.

simul. q. 160.

n. 378.

vertue of the Oath. These outward solemnities, and the precise formes of words, are to be distinguished from the substance of an Oath, so that this rule must still bee held for authenticke, *Quomodocumq; quis iurat, est iuramentum: et si modo falso iuret, est periarus*; What forme and ceremonies soever a man useth in taking an oath, he is sworne, and, if he sweare falsely, forsworne. For it is the substance and not the circumstances of the Oath, that makes the obligation to speake or doe what is sworn, & that binds on such termes, as that he that is sworne may not doe the contrarie; as appeares in the Israelites inference in my Text, *Now therefore we may not touch them.*

The validitie of the bond of an Oath.

VPon the discoverie of the Gibeonites neighbourhood, the Israelites grew angry, and murmured against the Princes of the Congregation; and well it might be feared, lest the multitude, thus incensed with the fraud used towards them, and the losse of such goodly possessions, should haue tooke head, and with their swords haue pleaded their title to those Cities of the Gibeonites, with all that should controule them. Yet see these Princes resolution, exposing themselves to the fury of the armed multitude, with termes of denying what they demand, only because they had sworne by the Lord G O D of Israel: yea, see the sudden calme of this tumultuous rout, as if they had beene charmed with the sound of these words. *We haue sworne by the Lord God of Israel.* This principle once premised, they all ioyne with them in the conclusion, *Therefore we may not touch them.* Which valiant pleading of the Princes for their Oath, and easie yeelding of the people, makes knowne the bond of an Oath, and giues vs occasion to enquire what and how great it is.

An Oath brings with it a twofold obligation, in respect of the matter of which the Oath is made: For there is *Iuramentum Assertorium*, assertorie, and *Promissorium*, promissory: the first is *de re presenti & prateritâ*, employed in testifying something present or past: the other is *de re futurâ*, for the assurance of somewhat to be done. Their bond is (saith *Aquinas*)

Aqui. *secunda quinas*) *ad veritatem in utroq;*, to truth in both; but with this difference, an *Aſſertorie* Oath bindes onely *ad veritatem* *Actus*, that the Iurer ſpeake only of the things as they were or are in themſelves, not at all engaged for the effecting ought in theſe things. A *Promiſſorie* Oath bindes *ad veritatem Actus & Rei*, both to the ſpeaking of the truth, and doing what he promiſeth. For, though it bee not mentioned by Thomas (who makes them to be referred only, one *ad veritatem Actus*, and the other *ad veritatem Rei*, yet in the *Promiſſorie*, there muſt be *veritas Actus* as well as *Rei*: his intent of doing what he promiſeth, muſt bee answerable to his oath of promiſing to doe. By an Oath then, a man is bound to a neceſſitie of doing what hee hath promiſed, and ſpeaking the truth. For, according to Gregorie Nyſſen, there is a two-fold effect of an Oath, the firſt, in him that receiveth the Oath, for, *πισυεται τῷ ἀκούοντι τὴν ἀλήθειαν*, he that ſwears, giues assurance of truth to the hearer: the other is, *τὴν ἀνάγκην ἐπαίγει τὸ μὴ δύναιτο παραβῆναι*, he layes vpon himſelfe a neceſſitie of ſpeaking the truth, and ſo alſo of doing what by oath hee hath promiſed to doe. For he hath ſealed his Contract with a Signet, wherein is engraue Pythagoras word *Σέβει ὄρκον*, Feare an Oath, which the worſt of Nations held inuiolable. *ὄρκον μέγιστον δολοῦν καὶ νότον* παρὰ πάντων ἀνθρώπων εἶναι, An Oath is of great weight with all men. Whereas in their contracts, mutually agreed on, a bare promiſe was held a bond ſufficient in naturall equity; heere is a double ſecuritie giuen, the laſt teſtimonie and prooſe that can be made of mans intent of performing his promiſe. Wherefore Aristotle ſaid it was *φδοῖς ἀναπόδεικτον*, a teſtimonie without farther prooſe. From which reuerend eſteeme in nature of an Oath, Lawgiuers, prouiding by their Lawes for the peace and ſafety of men, in the moſt compleat forme that Art could frame out of the rules of Nature, haue giuen it moſt abſolute prerogatives. *Dato iureiurando non aliud queritur, quàm An iuratum ſit remiſſâ quaſtione, An debeatur, quaſi ſatis probatum ſit iureiurando.* And againe, *Postquam iuramentum eſt, denegatur actio*: If an Oath be once giuen, no farther quaſtione is made of prooſe of what was controuerted, but only whether

Ar. 7. Corp.

Nyſſen in
Cant. ho. 4.

Ariſt. Rhet.
c. 18.

F. de iureiurando, l. Non erit iuratum. § Dato. Ibid. l. Non poſteaquam.

Whether

Whether the Oath be giuen: yea, and whereas all other acts made vpon other prooffe, are lyable to a plea of defeature, this made by Oath, admits no reuerſion. And Plato ſaith of *Plato de Legibus*, l. 12. *Rhadamant*, that he was wont with a bare Oath to decide all cauſes of difference of what nature ſoener: a courſe not to bee condemned, whilſt we behold yet further force and ſtrength added to this prooffe.

For he is aſſumed as witneſſe, who can admit of no falſhood, to whom all things are perfectly knowne, and whom none can thinke to deceiue and goe vnpuniſhed. Vpon which ground, *Juſtinian* in his Code forbears to decree any corporall puniſhment againſt periurie; and ſaith, *Iurifiurandi contempta religio ſatis Deum ultorem habet*: God (ſaith he) takes vpon him the reuerge of periurie. Whereof (if we may belecue Antiquitie) he hath giuen ſenſible arguments by the hands of his dumbe creatures. *Philoſtratus* tells vs, that in *Tyana* a Citie of *Cappadocia*, there was a Spring conſecrated to *Jupiter*, whoſe water being drunke by children, and ſuch as were free from periurie, was ſweet and pleaſant to them: but to periured perſons it proued ſo terrible, being drunke downe, that it diffuſed it ſelfe preſently into all parts of their body, filli^{ng} it with a moſt loathſome diſeaſe, and extorting from them a ſpeedy confeſſion of their fact. The like is reported by *Plinie* of a Riuer in *Bythinia*: By *Solinus*, of a Fountaine in *Sardinia*, whoſe water cleared the ſight of him that ſwore truly, but made him blind that was periured.

C. de rebus creditis, l. *Iurifiurandi contempta religio*.

Philoſt. in vita Apol. l. 1. c. 4.

Plin. hiſt. nat. l. 31. 2.

Solin. Poly. hiſt. c. 10.

Though we faile of ſuch meanes of trying periurie in later times, yet hath Hiſtorie left vs the registers of Gods Iudgements on periurie; which, by their continued ſucceſſion in ſeuerall Ages, tell vs what God is ſtill readie to doe. It was periurie that drew vpon *Zedechia* and all the remaining *Iewes*, that miſerable Captiuitie vnder *Nabuchodonosor*; 2 King. c. vii. By it was giuen that miraculous ouerthrow of the *Engliſh*, when the *Normans* became Conquerours of this Land; for, no other cauſe can the Hiſtorie finde, why the *Normane* ſhould winne the day, but only becauſe *Harald* kept not the Oath he had made to him. And it was this that made Chri-

Ezec. 17.

2 King. c. vii.

Eadmer Hiſt. Nob. l. 1.

Bonfin. Rerum Hung. Dec. 3. 1.6. stendome to mourne in the battell at *Varna*, and gaue the Turkes as much aduantage against our faith, as against our forces.

Euseb. Hist. Eccles. l. 6. c. 8. And that you may not thinke that vengeance takes notice onely of publike periurers, ye may behold her bloody markes on priuate persons. *Eusebius* tells vs of three wicked fellows that conspired in a false accusation against *Narcissus* Bishop of Hierusalem, one wishing he might bee consumed with fire, if he spake not true; another that hee might suffer some furious disease: the third, that he might be stricke blind: Marke Gods Iudgements, The first had his house set on fire from Heauen, and he and his whole familie were burnt to ashes: the second suddenly perished by a violent disease: with which spectacles the third was so afflicted, that hee confessed his and their crime, and (whether from the remorse of the fact, or feare of his owne doome) wept out his eyes. *Elfred*, suspected of conspiracie against *Athelstan* King of England, and sent to Rome to purge himselfe by oath; as soone as he had taken his oath, fell downe before the Altar, and being carried thence, dyed the third night after. A woman challenging a fellow to be her husband in the Consistorie at *Yorke*, and proffering her Oath for prooffe of it, while she was taking it, suddenly fell downe dead in the Court. It is a large common place, and all parts of the world can administer examples of Gods publike and priuate reuenging hand on periur'd persons.

Lev. 19. 12. If there were no argument of experience, Gods owne promise for the effecting of it should breed in a Christian a certaine beleefe, and an awfull expectation of vengeance on the offender. *Ye shall not sweare by my Name falsely, neither shalt thou take the name of the Lord thy God in vaine.* When is Gods Name more vainely vsed, when more prophaned, then when it is held for a bond most firme, and yet not regarded? When he is called to be a witnesse, and made to be but as a stocke or stone, insensible of what is done? The Gentiles might well deride our God, should he not expresse the apprehension of this disgrace. And therefore *Amurath* in that battell at *Varna*, seeing *Uladislans* at the first thruiuing

Bonfin. rerum Hung. dec. 3. 1.6.

thriuing vpon his periurie, and himselfe almost put to flight, might well lay open the Booke (wherein the former Contract was written) and iustly crie out; *Thou Christ, if thou be a God, powre downe thy wrath vpon thy people, that haue broken their Oath made by thy Name.*

The Lord is truly sensible of these disgraces, and hath said, *I will not hold him guiltlesse that taketh my Name in vaine.* Exod. 20. 7. He acquitted himselfe at that time of that reproach, and will euer make good his promise, if not presently by outward sensible punishments, by such as shall exceed all the tortures the world can thinke on.

Bethinke thy selfe then, thou that hast past thy Oath for the performance of any thing; thou hast bound thy selfe in a bond greater then the forfeiture of thy whole estate: Thy life, thy soule stands at stake. If neither the venerable respect which all Nations haue had of an Oath, nor the fearefull Iudgements which haue lighted vpon periurie, nor Gods awefull Name, nor his expresse command, can make this knot indissoluble; yet know, that thou hast giuen ouer the right which thou hadst to thy selfe, layd this and thy future life to pawne, by thine own consent exposed to all torments; thou hast challeng'd God to the execution of it, who hath promised to performe, and neuer failes his promises.

Consider this seriously, I beseech you, deare Christians: What is commended to the Vniuersitie, may be applyed to the Citie of London. for it neerely concernes vs all, especially of this place, where in there is none but hath or must enter often into this bond, whereby we bind our selues vpon *flat periurie*, for the obseruance of many Statutes. We cannot, without great danger to our soules, and reproach offered to God, continue in that remissenesse of keeping them, which (God knowes) is too frequent among vs.

And is there not an especiall care to bee had by those who frame this bond, not to require it, but where the waight of the thing may claime it? truly to distinguish these statutes of periurie from others of mulct, that vnder the colour of swearing to all alike, the obligation to the obseruance of all be not held alike? and lastly, to exact the keeping of them,

Aug. Ser. de
decollat.
S. Ioannis.
22. q. 5. Can.
Ille qui.

Aug. ibid.

that it may appeare they bound them to keepe them ; and from the rigour vsed on the Penall, set before their eyes the danger of those statutes of periurie ? An Oath (as hath been shewed) is a part of Gods worship ; and therefore to be taken and ministred with reuerence. Which, as it cannot stand with the swearers wilfull ignorance of what statutes he is sworne to ; so neither with his carelesse reuealing of them, who swears him. Nor is *irreuerence* the last degree of sinne in this action : but the one drawes on himselte a *necessitie* of periurie, whilest he vowes to keepe what hee is *unlikely* to know ; the other, *not only suffers*, but *forceth* him to fall into it, whilest requyring his Oath for keeping of statutes, hee neither before-hand *acquaints* him, nor afterwarde *provides* that he may know what he hath sworne. The one is likely to proue a *periur'd person*, the other a *murtherer*, nay worse than a murtherer : a murtherer slayes but the body, this the soule of man. It is S. Austins sentence, and out of him made a rule case in the Canon Law, for such as prouoke him to sweare, who they know will sweare falsly. Though it bee spoken there with reference to an *Affertorie* Oath, yet is it appliable to a *Promissorie* Oath in our case, where the Magistrate requires an Oath for the obseruance of statutes, which are either wilfully or carelesly by him kept secret from the swearer. So that, as it befalls him that sweares, (when hee violates those statutes) *Ecce iurat, ecce peierat, ecce perit* : he sweares, he is forsworne, he perisheth : so may we expostulate with the Magistrate in S. Austins words, *Tu quid inuenisti ? What hast thou gain'd by it ?* and make his reply, *Immo et tu perijsti, qui de illius sanguine te satiare voluisti* : thou also hast destroyed thy selfe, who wouldst glut thy selfe in anothers destruction.

You then that haue authoritie ouer other mens consciences, be mercifull to them ; if not for theirs, yet for your own sakes be mercifull to their consciences. Let them not be in danger of ruine, where they suspect not a slip : let not errors of humane infirmit es make them guiltie of grand periurie ; let not the omission of trifles bee punished with eternall death. Abrogate those lawes, which custome hath antiquated,

red, and let not some priuate mens consciences struggle against the worlds practice. Bring to light those hidden statutes, publish them to all, not only by reading, but expounding them, that you proue not the occasion of others periurie, nor others become guilty of that crime, which God so duely and seuerely punisheth.

I O S H V A, Chap. 9. Verse 19.

Wee haue sworne vnto them by the Lord God of Israel: now therefore we may not touch them.



Et it not be burthensome to you to recollect what hath beene heretofore spoken of this Text, or to hearken to what remaines. It was then diuided into two parts: 1, the Oath it selfe; *We haue sworn vnto them by the Lord God of Israel:* and herein we discovered 1, the *object* of an Oath, that it must be God only, (it being a part of his worship, he only being a fit testimonie of what is sworne.) Secondly, the *forme*, which we found to be diuers, and shewed which warrantable. The second generall was *The bond of this Oath: Now therefore we may not touch them.* Wherein were proposed three things to be handled. 1. The *validitie* of it, in this Illatiue particle *Therefore*: where we shewed the seuerall bonds of an *Affertorie* and *Promissorie* Oath, and the seuerall reasons that ratifie them. Secondly, *A question* to be examined, *Whether this bond hold in all cases? in what not?* Thirdly, Another *question*, *Whether* (where it holds) *it may bee dissolued by dispensation?* I then came so farre as to shew the strength of an Oath, and the necessitie of the inference. It remaines that we see whether this *Ergo* holds alwayes; and whether it bee not sometimes a *Non sequitur*, we haue sworne a thing, *Therefore we must doe it.*

Selua in his tract *de iurando*, puts 24 cases, wherein the bond of an Oath is made void. *Clanastius* in his *Summa Angelica*, Clauul. Sum. Angel, c, 27.

gelica, 27: whom should I make my patternes, I should wrong your patience, but much more your sinceritie: for diuers of their cases are such, as cannot be entertained without flat periurie. These I shall referue to be examined in the second place, and first contract those other to some few heads, which in the generall I conceiue to be two: the first *ex parte Rei*, in respect of the thing whereof the Oath is made. The second, *ex parte iurantis*, in regard of the person by whom the Oath is made. For both from the qualitie of the thing, and also the condition of the person, and from these only, may a *Promissorie* Oath be disanulled; First, *de re ipsa*.

In the thing there may be two cases, 1. *Si res sit impossibilis*: If that which is promised, be to him that promised, impossible to bee done. The second, *Si sit illicita*, unlawfull to be done. In the first case it is plaine to euery man, that there can be no bond for performance, since it is a rule not only in Law, but Nature, *Nemo tenetur ad impossibilia*. Nature expects nothing from any creature beyond its owne power.

The other acknowledging a power ouer it in the swearer, and being promised vpon such termes as are expressely commanded by God to be obserued, giues iust occasion of doubting, and therefore of an inquirie whether the *unlawfulnesse* may be a sufficient plea for not effecting it. The strength, which was heretofore giuen to an Oath, from the worlds esteeme, and the penalties that attend the violation, perswade; but the *sinfulnesse* of the act, whereon it is employed, cries out against the keeping of it, *Vndiq, periculum*: Sinne seemes to attend the choise, ready to seize on both: on the Performance, impietie; on the Neglect, periurie. In this perplexitie we want not directions. Saint Ambrose warrants

Ambros. offic.
l. 1. c. 50.

Isid. sent. l. 2.
c. 31.

vs, Est contra officium nonnunquam promissum soluere, sacramentum custodire: It is a sinne sometimes to performe thy promise, to keepe thy Oath. Isidor tels vs when; quo malum incaute promittitur; When we vnadvisedly vow to doe that which is sinfull. Hence Isidor's sentence in this case is now grown an Axiome in Diuinitie, In malis promissis rescinde fidem, in turpi voto muta decretum; Loose the knot of an unlawfull promise, alter the

the resolution of a wicked vow. A position drawne from the practice and doctrine of former Ages. When David had sworne to slay Nabal, being pacified by Abigaill, hee saw how farre his fury had transported him, that he should vow and intend the finishing off so wicked an act; and therefore said, Blessed be the Lord God of Israel, which sent thee this day to mee me, and blessed be thy aduice, and blessed be thou which hast kept me this day from comming to shed blood. It is his ioy rather to vndergoe the hazzard of periurie, then proue guiltie of murther. And whereas Herod chose rather to behead the Baptist, then waue his Oath, hee receiues this animaduersion from S. Ambrose vpon his wicked choise: *Aestimatum est fidei esse, quod amentia fuit*; That which hee reputed fidelitie, was indeed pure madnesse. The true censure of all such actions For, (as Lombard) *Qui non mutat, dupliciter peccat, et quia iniuste iurauit, et quia facit quod non debet.* He which proues faithfull in performing a rash oath, adds sin vnto sin; first, in vowing an vnlawfull act, and then more hainously in doing it, while he acts his wickednes, & makes God a partner, by exacting what he had before forbidden. Whereas, would he proue a true interpreter of his will, he should find that God hath cancell'd the bond made vnto him, and would rather none, then fidelitie in sinne. *Si ad peccatum commitendum exhibeatur fides, fides appellari non debet,* was S. Austins true verdict: Faith, if applyed to a wicked act, is not to be accounted faith. What then? The Heathens were so well instructed in this case, as they can resolute it. *Scelus est fides; fidelitie is here made sinne.* For as Claudius states it in Halicarnassus. in his speech to the Decemviri, (whom hee in the Senate challeng'd for a conspiracie against the liberties and safetie of the Common-weale,) If ye haue made any secret compacts, and haue giuen assurance in the name of the Gods, know, that if they tend to the wrong of the State, they are impious, if kept; religious, if broken. He giues that reason (which with Heathens and Christians is most infallible) *Dei idcirco vocantur, ut iustis rebus invocentur, non ut iniuste*. The Gods desire to haue their names employed in seemely
and

I Sam. 25. 22.
Exod. 32.
Ambros. offic.
l. 3. c. 12.
Lombard. l. 3.
dist. 39. h.
Halicarnass.
l. 11. c. 2.

Oathes against charitie not to be obserued.

and honest, but not in vile and wicked Contracts. Void therefore must we proclaime that Oath, which cannot be, vnlesse vnlawfully performed.

Thus much we haue found but only in the generall, where we may not stay: we should know into what actions in particular this vnlawfulness diffuseth it selfe. There is a twofold Law, *Diuine* and *Humane*, which limit all humane actions, and make them become vnlawfull, if they transgresse either of them: but whether this vnlawfulness bee in both of sufficient force to dissanull an Oath, we are to enquire.

First, touching the *Diuine Law*, that an Oath may not inforce vs to doe a thing by God expressly forbidden, needes no new prooffe. But of things which are commonly cast vnder another head, to wit, the *Law of Charitie*, there may be some doubt, because they seeme not so repugnant to Gods Law, and are stiled as if they were exempt from the Law. Particulars of this kind: as if a man should sweare neuer to lend money, not to goe to such a mans house, neuer to bee friends with another, and the like: Of which Oathes I may safely say, *they are not to be kept.* For, *Quod pro charitate institutum est, contra charitatem militare non debet; What is intended for the advancement of charitie, may not beare armes against charitie.* The solemnitie of an Oath was ordained for the benefit of humane societie, and therefore may not be employed for the ruine of it. Heare Saint *Augustines* and Saint *Ambroses* ioynt aduice in such a case. *Seuerus* hauing written to S. *Augustine* to craue S. *Ambrose* his counsell concerning one *Ubold*, his Parishioner, who had vowed to turne his Mother and Brethren out of his doores, and neuer to giue them any reliefe, receiues this answer: *Iuramentum non ob hoc fuisse institutum inuenitur, ut esset vinculum iniquitatis, vel matricidij vel fratricidij, seu cuiuscunq; criminis: An Oath was not appointed to be a bond of iniquitie, or any other crime.* And therefore this determination is made: *Foueat itaq; Let Ubold cherish his Mother and Brethren, and let him bewaile the keeping of his Oath.*

Bernard.

C. 22. q. 4.
Ca. Inter
cetera.

Yea, wee finde the like decision made by a Councell in
Spaine,

Spaine, the eighth Toledo Councell; the cause was thus: in the sixth Councell there was a Decree made, that every succeeding King of Spaine, should, at his Coronation, take an Oath, to drive out of his dominions, all that professed not the true faith, upon paine of *Anathema Maranatha*: King *Recessarint* (more Chrillianly-minded then *Ferdinand*, (whom *Caranza* commends, for expulſing the Saracens by vertue of this Decree) afterwards comming to the Crowne, and ſeeing what a cruell act hee was to put in execution, mooued with much pittie, propoſeth it to the Councell, to conſider of this Oath, whether it were to be kept. Hee himſelfe pleades the cauſe, *Pro et Con.* at large; and at length it was concluded by the Councell, that the Oath was void. The reaſons are extant. And we may ſupport theſe proofes from Humane authority, by Gods warrant, who hath expreſſed his minde in ſome caſes, as for the reliefe of the diſtreſſed, *Deut. 15. 7.* If one of thy brethren with thee bee poore, thou ſhalt not harden thine heart, nor ſhut thine hand from thy poore brother, &c. Heerein leauing vs a direction of working the like particular conſolutions out of that vniuerſall Principle, *Thou ſhalt loue thy neighbour as thy ſelfe*: and ſo intimating that an Oath made againſt the fulfilling of them, directly tends to the violation of Gods Lawes.

It remaines, that wee ſee whether actions forbidden by Humane Lawes, bee alſo vncapable of an Oath. Heere the oppoſition ſeemeth to ſtand betweene God and man; man prohibiting the thing, but God requiring the performance of the Oath. And yet euen in this caſe an Oath is void, and better broken then kept. This is a receiued truth in the Canon Law, as appeares from *Innocent's* direction to the Archbiſhop of *Piſa*, concerning one that had made an Oath preiudiciall to the Eccleſiaſticall Lawes: where hee tells him, that his Oath againſt the Canonick Decrees could not be lawfully kept. And it is a true collection, which the Gloſſe on that Chapter makes out of the Ciuill Law; That an Oath made repugnant to the authoritie of the Law, nullus eſt momenti, is not at all available. For according to an Axi-

Decret. Greg. 1.2. tit. 2. de foro competente, Ca. Si diligenti. F. de legat. & fidei comiſ. l. Siquis inquit, ſi. Si ita,

Rom. 13. 1.

ome of theirs, *Accessorium sequitur naturam Principalis*: The Oath then being but an *accessorie* to the thing that is to bee done, (that the promise made of the thing may bee the more firme:) If the thing it selfe may not be done, neither may the Oath, added to it, be obserued: and if the action bee in it selfe sinfull, the Oath hath no longer power of binding to the performance; because that is alwayes true, *Iuramentum non est vinculum iniquitatis*, An Oath is not a bond for wickednesse. That from the transgression, at least from a contemptuous wilfull transgression of Humane Decrees, there doth arise sinfulness, may appeare from the generall precept of the Apostle, *Let euery soule bee subiect to the higher power*. And that wee may bee sure there ensues iniquitie vpon the neglect of his obedience, he addes, *For there is no power but of God; The powers that be, are ordained of God, and they that resist shall receiue to themselves damnation*. But wherein stands this prerogative of Gouvernours? In the *executing* of those Lawes onely, which God hath prescribed? and not in making new? No sure, we must be subiect to them according to the extent of their power; and therefore to the Lawes which they frame subordinate to Gods. For in that generall power of governing, is included that of giuing Lawes, as being but a branch of the generall. *Iniquitie then attends the violation of their Decrees*; and therefore an Oath, whereby thou standest bound to violate them, must be broken. I may not stay to instance, nor confirme it at large, but must hasten on to the second condition, which is *ex parte iurantis*, the person that takes the Oath.

Such may bee the condition of him that sweares, that though he sweare, yet is hee not to performe it, because hee hath not *dominium rei promissae*, power ouer the thing. As if an inferiour sweare to dispose of himselfe, so that it shall bee preiudiciall to that authoritie which his superiour hath ouer him; as a Sonne in respect of his Father, a Pupill in respect of his Tutor, and the like. This is grounded on that generall precept, *Honour thy Father and thy Mother*, and more particularly ordered by God himselfe in the 30 of Numbers.

If

If a Maid hath made a vow, and her Father disallow it, her Numb. 30. 3.
vowes and bonds shall be of no force: and if a Wife make a vow,
and her Husband disallow it, he shall make it of none effect. And
thus it is in all subordinations in the Church and Common-
weale. We are all, as it were, in a nonage, & haue not the ab-
solute power of disposing of our selues. *Baronius* makes this Baron. Annall.
the cause, why *Artaldus* Archbishop of *Rhemes* was by the ad an. 941.
Counsell of *Sweffe* put out, because before being in competi-
tion with a boy that was chosen, he swore hee would neuer
admit him. If the Church require it, it is not the rash Oath
against entring into orders, that may keepe thee backe:
though *Basils* counsell be good, that such should be passed ouer, *Basil ad Am-*
because they enter not safely, who beginne in periurie. Nor can phita. c. 10.
any mans Oath shift off the burthen of any publike Office in
the Common-weale, if by lawfull authoritie he bee designed
to it. *Iuramentum non est obligatorium in praiudicium superio-*
ris. And no greater preiudice is there of authoritie, then
when that shall be withstood, wherein the Common good is
sought. Therefore in such Oathes, wee must presume that
this clause of the *Cinilians* is vnderstood, *Semper censetur ex-*
cepta autoritas Legis & Principis; the authoritie of the Lawes
and the Prince is alwaies presumed to be excepted; or else wee
must, without repining, giue ouer the maintaining of the
Oath.

This defect in the person, of not hauing *dominium rei pro-*
missa, may be where there is not this superioritie of order, but
only of the power of disposing of the thing promised betweene
equals. When a man vowes the hauing or giuing of some
thing, which is not in his owne, but anothers disposing: an
Oath too common. An instance wee finde in an Epistle
of Saint *Austine*, in one *Timothie*, who hauing beene a Rea- Aug. Ep. 140.
der in *S. Austines* Diocesse, and afterward betaking himselfe
to *Seuerus*, made an Oath neuer to depart from him: and
whereas *S. Austine* was earnest for his returne, the Oath
was pretended as a sufficient answer from both: from *Time-*
thie for not returning (because he had sworne:) from *Seue-*
rus, for not dismissing him, that he might not be the Author

In what cases the conscience may be calm'd,

of his periurie. What is S. Austins reply in this case? *Qui hoc finet, non eſt c.* He that will not be made the occasion of another mans periurie, neither will he suffer such a one to remaine with him. His reason to inforce it is, *Quia de se, non de altero iurare potuit,* He might sweare for himselfe, but not for another: as if at the present swearing, it had beene made voyd by reason of rashnesse and indiscretion, in vowing that whereof he had no power.

C. 22. q. 4.
Ca. Siquis
præuent.

You then, beloued Christians, whosoever you bee, that make a conscience of keeping your Oathes, and finde your selues ensnared with other sinnes, if you keepe them, may hence free your soules from this perplexitie, and frame this certaine comfortable conclusion, *Iuramenta illicita laudabiliter solvantur, damnabiliter observantur*: the breaking of an unlawfull Oath is commendable, the keeping of it damnable. In other cases, you are forced to take an acquittance for a non-performance, since as things in themselves impossible, so also those things which are anothers right, stand not within the compasse of your owne power.

Biel. 3. d. 39.
q. 1. conclus. 4.

But are you heereby acquitted from all danger of your Oathes? I must heere stay a hastie conclusion like to bee drawne from hence: and put you in mind of a double obligation in an Oath: The one is, *ad factum*, for the effecting of what is sworne: The other, *ad peccatum*, as to the guilt of sin, so to the punishment due to sinne, vpon default in the Oath. Ye may be acquitted from the former bond of doing what was promised, and yet by the later be held liable to eternall death. For instance: Some one will sweare he will be the death of such a man: He is freed from the fact, because it is unlawfull: but made guiltie of sinne, by swearing that which is unlawfulfull. For he calls God to witnesse the violation of his owne command, and most irreuerently abuseth his Name.

That wee may know when wee are subiect to this bond, when free, wee must distinguish the times, when that other bond is made voyd. The bond for doing the thing promised, is made voyd first at the time of swearing, if the thing promised bee then unlawfull or impossible; as if a man should sweare

swear to helpe his friend in robbing another ; or to pay a great summe of money at a set day, when he knowes he neither hath it, nor can procure it. Secondly, this bond may at the first be of force, yet *ex euentu*, by some thing that may afterward fall out, become void. As if a man vow to his friend neuer to oppose him ; the Oath in it selfe may be allowable : But if this friend proue afterward a Traitor to his Countrey, or an enemy to his Religion, hee is now freed of his Oath. The like, if a man hath sworne to pay a summe of money, which at that time hee can make good, and afterward falls into extreme pouertie.

In this last case, as there is a freedome from doing what was sworne, so from the *sinfulness* that might befall an Oath in the *prosecution* or *propofall*. From *sinfulness* in the *prosecution*, because the lawfulness or possibilitie of the action now failes : from *sinfulness* in the *propofall*, because the purpose of the swearer agreed with the words of the Oath : nor were, nor could those alterations bee foreseene, which since are knowne. And therefore such as finde their case to be of this nature, may haue a warrant for surceasing from the attempt of the promised action, and a sure ground for acquitting themselues of sinne vpon this surcease.

But when to the first Contract, the *bond of performance* is made void by the indisposition of the thing promised, the *bond of sinne* takes hold, and he that sweares, becomes guiltie; not for not doing what he sweares, but for swearing what is not to be done : so farre is he from repairing this breach by doing what is sworne, as that he should much more increase the sinne. Which difference was thus sorted in the eighth Toledo Councell: *By periurie we offend God, but onely deface our selues : but in striuing to fulfill unlawfull oathes, we arrogantly contemne Gods commands, on others use impious crueltie, and farre greater on our selues, killing their bodies, but murthering our owne soules.* Concil. Tol. 8.

This sinne hath bin by the Ancients vsually branded with the name of periurie ; and by our late *sinne-masters*, neuer put in a lower ranke then mortall. The soule hath beene

Herdense Con.
Can. 7.

accounted deeply wounded by it, and, for the cure thereof, strict penance hath been enioyned by Fathers and Counsels. Heare one, the Councell of *Ilerd*, giuing sentence in a case, which too often falls out among vs. *Qui sacramento se obligat, &c.* He that falling out with another, shall sweare not to be reconciled, let him for his periurie, for a twelue moneth bee deprived of the body and blood of his Sauionr, and let him cleanse his soule of that staine, by almes, teares, and continuall fasts. These outward punishmēts vnhappily failing in our Church, argue not the lightnesse of the sinne, but our dangerous securitie, which want such meanes of discovering it, and frightening vs from the sinne. Our carefull restraint of our tongues, should redeeme this want, by preuenting such indiscreet, vncharitable, irreligious Oathes; and (if they slip from vs) by a speedy acknowledgement, and humble repentance amending them.

I haue shewne in generall, in what cases this is a *non sequitur*, I haue sworne, Therefore I must doe it. It remaines, according to my proposall, that wee see whether some other, which are by many ioyned to them, are iust causes of not keeping an Oath. And first, of forced Oathes.

Forced Oathes.

Alensis p. 3. q.
31. m. 4. r. 4.
fs. 2.

De Iureiuran-
do. Ca. Si verò.

VERE I made the *Umpire* in the cause of a forced Oath, I should not (with our Countrey-man *Hales*) propose two opinions, the one affirmatiue, the other Negatiue, with this indifferencie, *Elige quam mauis*. But with Pope Alexander the third, It is not safe for any man to goe against his Oath, unlesse it tend to sinne: nor will I minister matter of Periurie to any man. This was his definition in this case, though the practice (as he saith) of his predecessors had pleaded the contrarie; and (for ought I finde in the maine (laying aside some conditions by some thrust in) is the ioynt opinion of Schoole-men, Casuists, and Canonists. It is true indeed, we may finde some pleading mainly against this obligation, as the *Ciuiilians*, and also the *Canonists*, and some others: but let not this difference weaken thy esteeme of this bond:

For

For the nature of the Oath is changed by the change of the Court: they examining the force of it *in foro exteriori*, not in the Court of conscience, where our cause is now to bee tryed, but in the Court of *Humane equitie*. Their end is not the same: but if the cause be to be examined betweene God and thine owne conscience, euen by the consent of these, thou canst expect no release.

Should any of vs fall into the hands of an enemie, robber, or the like, and can preserue our liues or freedoms, onely by the pawne of our Oath for doing what is enioyned vs, (as to pay a summe of monie, or returne to captiuitie, or the like, (alwayes this clause prouided, it be not vnlawfull) wee are bound vpon point of no lesse then eternall damnation to performe it. I must confesse there are exceptions made euen heere: as first, in the case of captiuitie, by Suarez in the particular, (if after, there appeare danger of death vpon his returne) and others of his profession in the generall, whose position is, that *Rebus non sic stantibus*, if there bee any eminent change, (as in Suarez instance, If there be discovered danger of death vpon the returne, which was not before knowne,) the partie sworne may be excused for his Oath, and acquitted of his returne. Suarez de Iuramento, l. 2. c. 10.

Againe, others of another religion, vpon another ground, labour to maintaine the same conclusion. For, say they, though he know the danger attending his returne, hee may not returne. Why? Because this were to tempt God, (who hath used this meanes to free him) and to expose himselfe to death, whereas he is now free. For the satisfying of which objections, I might for the Papists authorities of their owne men, in maintaining that position thus misapplied, That an Oath bindes onely *Rebus sic stantibus*, oppose others of their owne companie, who for their sinceritie, and care in examining it, (though not for name) deserue the swaying voice: but I passe them ouer. They haue an expresse Canon for it.

An Oath is to be kept, *nisi vergat in interitum aeternae salutis*; De Iureiuran. vnlesse it tend to the ruine of the soule. Which may bee supported with these reasons. The first is, The life of man is not so highly do. C. Si verò.

highly valued, as that a man should bee periured to redceme it. This all these grant before they bee taken; and therefore should they grant it afterward, since the bond is still the same. Secondly, Periurie is in it selfe wicked, and therefore no necessitie can excuse a man from the guilt of it.

To those others, we may returne their argument vpon themselves, whilst they flye to Gods purpose, and tell them, that by the same reason, when he was in the enemies hands, it was Gods will he should be there, and therefore was hee not to desire his freedome, at least *unlawfully*: and whereas he is now free, it is onely by vertue of his Oath; nor is his life his owne, further then Gods testimonie preuailed for the returning of it into his hands, whose before it was, and still is, without expresse violation of Gods command for the honour of his Name.

Giue way to this reason of theirs, and farewell all promises, all compacts, all societie betweene man and man. For as it falls out in the case of danger, (heere instanced in by them) that though a man hath pawned his Oath for his returne to his enemies, yet is he not bound to returne, if he be out of custodie, because this were a temptation of God, who hath allotted him meanes of escape; so shall it be in all other promises that may proue iniurious, hurtfull or incommodious to the swearer. Hath the captiue prisoner sworne neuer to make an escape? might he enioy his libertie, hee should tempt God, if he should neglect a fit oportunitie of escaping. Hath he promised to pay a rancome for his release? It were to slight the meanes which God hath afforded him, to pay it, when his enemy cannot force him to it. Nor doth it hold onely against an enemy, but may be as sufficient a plea in all other ingagements. Hast thou promised to pay a summe of money, which may bee an abatement of thine estate? Hast thou sworne to helpe another: which cannot be done without charge and trouble to thee? Hast thou engaged thy selfe for the performance of any thing, which afterwards thou wishest thy selfe free from? Come hither, and heare Casuists according to thine owne hearts desire. If thou hast escaped

ped with onely an Oath, and no other engagements force thee to a performance, it was Gods will thou shouldest bee no farther engaged, and therefore shouldst thou tempt him by empayring thine estate, by hazzarding thy substance, casting thy selfe into troubles, when hee hath kept thee free from all other bonds but an Oath. The difference of the occasions (because in those the *preservation of life* is pretended, but in these, *pettie losses*) is not a sufficient barre to this my inference. For if it be true (which they allow) that the *lightnesse of the obiect makes not an action innocent* in respect of the morall Law: (for example, the *stealing of an halfe penny*, is a breach of the eighth Commandement, as well as the *stealing of twentie pounds*) nor can the *urgent necessities* of the offender acquit him from the transgressing of the command: so that the poore mans stealing to *satisfie his hunger*, violates the Commandement, as well as his that steales to *enjoy his pleasures*. If diuersitie in the *object and circumstances* cannot varie the actions, but both must be theft, it needs must follow, that the differences of circumstances aboue-named, which should cause the breach of the Oath, cannot hinder, but that he that breakes his Oath for his *life*, is periured as deeply, as he that doth for his *goods*: and therefore they that exempt the one, must also exempt the other from periurie. Bucer Bucer in Matt. therefore determines this point more Christianly, saying; 14.
Quin si hostis, &c. If the Enemy shall force him to sweare that he will retorne againe, nor can he expect ought but death upon his retorne, Non dubitarim tamen pio tanti iusiurandum fore, ut facturus sit, quod iurauit: I thinke there is no good man, but will so much esteeme of his Oath, as that hee will retorne. The reason of his presumption is cleane contradictorie to that aboue, and is that onely which religion allowes, and I haue already touched. *Cogitabit namq, ab optimo Patre in manus hostis se traditum esse: He will thus meditate with himselfe, I am by the will of my beauenly Father deliuered into the hands of mine enemy, out of which, neither by vngodly deceit, nor periurie, (that is, by no meanes not allowed by this his Father) will be labour to escape, content only to vse such meanes as God hath ap-
F proved.*

proved. Whereupon we will frame this conclusion of this case: *Unde si ad quid ab hoste amandetur, &c.* If he be sent of the Enemy upon any employment, or he himselfe hath obtained leaue to goe any whither, giuing his oath for his returne; without doubt he will returne, whatsoeuer is like to befall him, yea though hee be perswaded he shall be put to death at his returne.

In Psal. 15.

2. Concerning paying money to theenes, on a constrained oath, I find a Commentator of eminent note amongvs, dissabling the bond: but (not depriuing him of due honor) I must desire that his name be not a motiue, nor his assertion an argument in this case. For his doctrine is so dangerous, that I find but one amongst many of our English, & of outlandish Churches neuer a one that approues it. Protestants and Papists ioyntly maintaine, that it is to be payed. But amongst these that grant he is to bring the promised monie, there ariseth another case. If the theefe shall require of him an Oath *neuer to discouer him*, Whether he stand bound? The Casuists agree in the *Negative*, and Protestants (such as I haue seene touch the point) *Ursine* only excepted in his Catech. q. 102. who holds, the Oath is to be kept: whose authoritie preuailes with me vpon this reason, (which may ratifie also what hath beene said of the former point, and ouerthrow the ground, whereon they of the *Negative* build.) Their only reason for *not concealing* is, because it is *against the publike good*; which, if to be regarded, then much rather is the Oath to bee kept, since by this meanes it shall fall out that no captiue shall euer be released, no man falling into the hands of robbers, shall preferue his life; because the bond may bee broken, by vertue whereof only any agreement may be made; and therefore from hence shall the Common-weale suffer losse of many mens *lines*, whereas otherwise it would be but the losse of some *substance*: and whereas they vrge that hereby *theenes may be taken*, and so other robberies be preuented, we may much rather conclude, that no man shall euer escape to discouer them; both goods and lines of more shall perish. Wee must therefore be warie in entertaining the expositions of forced Oathes, lest whilest wee labour for a temporall *safetie*, wee fall vpon eternall danger.

Of

Of a fallacious Oath.

I Haue stayed too long in this first, I shall make some amends in a speedy dispatch of what remaines. A second doubt is made about a *Fallacious Oath*, when a man sweares one thing, and *meanes not* the performance, or *intends another*, (either by a *secret reservation*, or a *double interpretation*;) whether in these cases the Oath giuen necessarily bind. Concerning the first part of the question, the Schoolemen and Casuists are variable, some holding that it binds onely *in foro exteriori*, others, *in foro conscientia* too, before God, and vpon paine of mortall sinne: whereon Sayrus concludes, and it must be the conclusion of euery Christian that will bee free from periurie. I will vse his reason for prooffe of it, The obligation for doing what is sworne, necessarily ariseth vpon the Oath made. For it is its naturall effect, as inseparable from it, as heate from fire: and therefore wheresoener there is a purpose of swearing, there is included a purpose of doing it, and therefore of binding. Or it may farther be ratified, (which serues also for resolution of the whole doubt) by their Canon *Quacumq;* taken from *Isidore*, and held most authentique amongst them all: *Quacumq; arte verborum quis iurat, Deus tamen, qui conscientia testis est, ita hoc accipit, sicut ille, cui iuratur, intelligit.* Let a man vse what diuers-sens'd words he please, yet God, who knowes his heart, so interprets them, as he, to whom his Oath is made: and therefore he cannot but be liable to sinne: a double sinne, (as *Isidore* expounds it.) First, in that he takes the name of God in vaine, calling him to witnesse what he intends not: and secondly, in that he deceiues him to whom hee sweares, not intending to doe what he conceiues is sworne.

Sayrus Clauis
Reg. Sacerd.
l. 5. c. 6.

C. 22. q. 1.
Quacumq;

I should wrong them, should I lay it to their charge, that they allow of *ambiguous words*, whereby he that receiues the Oath may be deceiued. They openly disclaime it, and ioyne with vs in pleading against it. But yet they haue a case wherein (of late) they maintaine it. *Cum irrationabiliter requisitus fuerit*, when a man shall bee demanded an Oath, in a

Aug. de mend.
c. 3.

thing not fit to be discovered. Of which damnable doctrine of Equiuocation I might now speake, but that it deserues a larger discourse, and needs no refutation amongst our selues. That which our touching on it now aimes at, is, that from the detestation of it in the Papists, and acknowledging the truth of what hath beene deliuered, we keepe our selues innocent of that crime. Doe not, with *Arrim*, hold out one paper in thy hand, and sweare of another in thy bosome. Make not him, to whom thou swearest, thinke thou hast confirmed, what thou promistest, and thou intend another thing: the ground of such an Oath is a plaine lye. For, (as *S. Austine*) *ille mentitur, qui aliud habet in animo, et aliud verbis, vel quibuslibet significationibus enunciat: Hee lyes, that keepes one thing in his mind, and speakes another in words, whatsoever sense they carry*: and therefore the Oath that is added for confirmation of this, must needs bee false, flat periurie, and that most wilfully and desperately committed, since it is his aime to beguile him to whom he sweares. Now as it falls out with him that lyeth to another, he beguiles him of some temporall commoditie, but himselfe of eternall blessings: so, by how much the more securely hee beguiles another by the addition of his Oath, by so much the more deeply doth he wound his owne soule, by the addition of his deceitfull Oath. Obserue an Heathens rule; *Semper in fide quid senseris, non quid dixeris cogitandum*: In a promise, minde not so much thy words as thine owne meaning. When thou dealest with any man, let thy meaning answer his words; thy words, thine owne meaning; so shall he bee secure from deceit, and thou from the danger of deceitfull periurie.

Of an Oath deceitfully procured.

THirdly, I find, that deceit vsed in procuring of an Oath, is held a sufficient plea for not keeping it. This the Papists and Protestants generally maintaine: and from hence thinke, that *Iosuah* was not at all bound to the Gibeonites, because they professed themselves to be what they were not. But I presume,

presume, many haue past their opinion vpon no other ground but those common Axiomes of the Law, *Dolus alterius non debet alicui esse damnosus*; No man is to be endamaged by anothers deceit. *Nemo ex suo dolo debet lucrari*: No man should gaine by deceit: and the like: thereby confounding those courts of law and conscience; making those rules which hold onely in a *Cinill Court*, to be the guides of a mans conscience. For, that a man in such a case stands bound to keepe his Oath, was in the time of *Iosuah* an vndoubted truth, which we collect not only from *Iosuahs* religious keeping of his Oath, but from that opinion the Heathen had of it. For had not these Canaanites beene assured that this deceit of theirs could not haue preiudiced their cause, in vaine had beene this their proiect in deceiuing *Iosuah*.

A further discussing of this point, as also of those other cases wherein the bond of an Oath is questioned, depends vpon the particular examination of the circumstances of this Oath in my Text, which the time will not giue leaue to reassume.

Now, vnto him that is called Faithfull and true, blessing and glory and wisdom and thanksgiuing and honour and power and might be giuen, for euer and euer.

IO S H V A, Chap. 9. Verse 19.

Wee haue sworne vnto them by the Lord God of Israel: now therefore we may not touch them.



Here are (I confesse) some yeeres past, since I first set this Text before you: but as I presume the causes of interrupting the prosecution of it were iust, so I hope the reassuming of it will proue not altogether vnseasonable, or vsutable to some present occasions in the world.

May it please you then to remember, that I diuided this

Text into two generall parts. First, the Oath of *Iosuah* and the Princes of Israel, made vnto the Gibeonites, in these words, *We haue sworne vnto them by the Lord God of Israel.* Secondly, the Bond of this Oath, in that inference, *Now therefore wee may not touch them.* In the first Generall were handled two things: First, the *Object* of an Oath: secondly, the *forme* of framing it. In the second Generall, I proposed three points to bee considered: First, the *validitie* of the Bond, and *necessitie* of the Princes inference, while they peremptorily conclude, *Therefore we may not touch them.* The second, An Enquirie touching the *force* of this inference, *whether euery Oath doth thus necessarily binde*: particularly, *whether this of the Israelites did.* The third, Another Enquirie, vpon supposall of the *validitie* of the Oath, *whether it may not be dissolved by Dispensation or any other meanes.*

The first Enquirie was grounded vpon many circumstances, which fall out in this treatie betweene *Iosuah* and the Gibeonites: which were, first, a *condition supposed in the contract*; Secondly, the *Deceit* which was vsed by the Gibeonites; Thirdly, *Gods command*; Fourthly, their *difference of religion.* And that wee might haue a more free passage to the weighing the force of these exceptions, I shewed, first, in what cases an Oath binds not, to wit, first, *a parte rei iurate*, in respect of the thing, if it bee either *impossible* or *unlawfull*: secondly, *a parte iurantis*, in respect of him that sweareth, if hee bee not *sui iuris*, hath not power ouer the thing (which he promiseth) without the *consent* of another. And then I toucht vpon one maine case, whether *Forced Oathes* doe binde; and shewed that they doe necessarily binde the *conscience*, though sometimes there bee reliefe in *Courts.* I mentioned also those Oathes, which are taken with *Equi-ocation*, and such as are wrested from another by *deceit*: this later, and the cases which remaine vnhandled, haue speciall reference to this particular Oath in my Text: and the tryall of their *force* in this, will discover the regard that is to be had of them in other Oathes. For whereas this act of *Iosuah* is diuersly censured, some holding that hee was bound, others,

others, that he was *not*: these later haue diuers motives for their opinion, some from the *conditions*, which they suppose passed in the contract, but were not obserued: others, from the Gibeonites *deceit* and *lying* vnto *Iosuah*, faigning themselves to bee forrainers, being indeed neighbours: others, from the *speciall precept* giuen by God for the destroying of the Canaanites, whereof the Gibeonites were a branch: others, from the *Infidelitie* and *Idolatrie* of this people. The points are many, and therefore, desirous to speake somewhat of all briefly, rather then to detaine you with a longer expectation of them, I beginne with the *conditions*, which are made a plea for disanulling *Iosuahs* Oath.

Of the conditions supposed in the Israelites Oath.

× **F***Rangenti fidem, fides frangatur eidem*, is a Maxime in sense as ancient as commerce; and hee that made the first conditionall compact, knew himselfe to be acquitted of his bargain, if the conditions failed, on which it was grounded. In a matter then of such consequence, (as this betweene the Princes of *Israel* and the Gibeonites) to say that the Israelites should acknowledge the Gibeonites to haue failed in their conditions, and yet they account themselves bound to theirs, were to condemne them of more then ordinarie folly, and grosse ignorance in ciuill compacts: besides, the Gibeonites themselves had failed in their proiect, and in vaine had vrged the Israelites to an Oath, vnlesse it might be vpon such termes as might not afterward disanull it. Conditions wee heare of none: and (howeuer the parley before-hand might seeme to driue at some) yet should I conceiue with *Lyra*, that *sub forma iuramenti*, under the forme of the Oath, there were either no conditions, or such only expressed in the compact, as the Gibeonites did obserue; wherein, if their action may not escape a censure, they should rather bee charged with too much credulitie and vnadvisednesse in omitting the condition, which haste might cause, then such grosse follie continued and maintained vpon deliberation, and many urgencies to the contrarie.

What.

What-euer were their motiues to omit these conditions, that they make not *presumption of them* a plea to breake their Oath, (notwithstanding the many inducements of profit that might redound to them thereby,) they leaue vnto succeeding ages a patterne for dealing in compacts: That wee account not an Oath void, if we faile of all conditions, which wee presume on in the contracts.

It is true, *Iuramentum conditionatum non tenet, deficiente conditione*: a man is not bound to keepe his Oath giuen vpon conditions, if he faile in the conditions to whom it is giuen. But what conditions? all that the swearer desires should be kept? No: but such as he specifies before his Oath, and particularly requires to be kept.

Yet mistake me not, there are some conditions *Generall*, and *essentiall* to a contract, (as in a promise of payment, the willingnesse in the receiuer to receiue it, or the like,) and these need no naming of them: but for other *particular conditions*, the rule of Casuists holds, *Speciales condiciones non intelliguntur in iuramento, nisi exprimantur, quamuis mente concipiantur*: Howener thou maist thinke with thy selfe of such and such conditions, and suppose them employed in some other proposed, yet is not he bound with whom thou dost compact, for the performance of them, nor art thou freed for dissoluing the compact, vpon non-performance, how great soeuer the losse be that thence ensueth, it can be no impeachment to thine Oath. Thou art now to regard thy neighbours commoditie, not thine owne; and vpon such termes art thou bound, that without the guilt of periurie, thou canst not alter it. The fault is heere meere-ly thine own, nor may another be punished for thy oversight. Were it that he with whom thou bargainest, had cunningly altred or auoided thy conditions, he might seeme to deserue the punishment: but whether a man in that case stands free of his Oath, is in the next place to be enquired.

Armil. Aurea
v. Iuramentū.
ls. 18.

The Gibeonites deceitfulnesse.

THe Gibeonites hearing of the Israelites comming into their coasts, and the destruction of *Ai* and *Iericho*, *Iosuah 9.4.5.* wrought wilily, and went and made as if they had been Ambassadors come from farre, carrying with them old apparell and mouldie prouision, as an outward testimonie of it. *Iosuah* and the Princes are perswaded of the truth of what they heard and saw, and vpon that, passe their Oath to saue them. They are presently after found to bee neighbours, and by grosse deceit to haue wrested from them this Oath. Wherefore many Interpretours, examining this fact by some rules in Law, as, *Nemo debet lucrari ex suo dolo*, and the like, pronounce the Gibeonites disabled for the claime of a promise, and *Iosuah* freed from his engagement for performance of it. Vnfit Iudges to sit in a doubtfull case of an Oath; that so peremptorily determine a definitiue sentence against that, which the generall consent of Nations alloweth, and Diuinitie doth not condemne. The case is presumed to be betweene enemies; amongst whom, the vse of *stratagemmes* hath alwayes beene approued: they had anciently from the Oracle a direction, *Non Marte sed astu belligerandum*: And it's taken into the Canon Law for a rule out of *S^c. Austine*, *Cum iustum bellum susceperis, utrum aperta pugna, utrum indijs vincas, nihil ad iniustitiam interest.* *Force and deceit are alike warrantable betweene foes*: and therefore the Gibeonites clowted shooes against the Israelites naked swords. If the same case bee put in a time of peace, betweene presumed friends, or at least, no open enemies, this practice of deceit might seeme to alter the contract. It is true there is an alteration made, but only thus farre, that the fact, which before might be iust and lawfull, is now made sinfull to the person deceiuing, but no aduantage to the person deceiued. The obligation of the person deceiued is the same both in War and peace, in publike and priuate contracts. Nor can he slacke the returne of his promise, without manifest guilt of periurie.

C. 22. q. 2.
Ca. Dominus
noster.

Machiauel.
de Principe,

It is a good instruction which *Machiauel* giues in termes,

if c. 18.

The extent of Gods command

if we adde not his interpretation of it. *Neceſſarium eſt ut Princeps rectum utruſqꝫ bellua leonis & vulpis uſum teneat* : That a Prince be ſo farre ſkilled in the Foxes qualitie, that he may be able to diſcouer anothers wiles, and honeſtly decline them ; and then moſt neceſſarie, when hee is to deale with deceitfull Gibeonites. But if Iſuah meet with Gibeonites, and his goodneſſe makes him not ſuſpect their deceitfulneſſe : let him not reuenge their lying with his owne periurie : but anſwere the peoples tumult with *Wee haue ſworne by the Lord God of Iſrael* : Now therefore (notwithſtanding this their deceit) *we may not touch them*. And ſo I goe to ſee if there be any better plea for breaking this league, which in the third place ſeemeth to be Gods command.

The Iſraelites Oath was not againſt Gods command.

THat the Gibeonites were of the Canaanites, is out of queſtion ; and therefore they ſeeme lyable to thoſe Iudgements which God had pronounced againſt the Canaanites in generall. Now concerning theſe, we heare God often in the Scriptures, not onely threatning, but expreſſely commanding that the Iſraelites ſhould make no contracts with them, ſpare the liues of none of the, but vtterly deſtroy them. The Commandement is by God himſelfe deliuered, *Exod. 23. 31, 32. I will deliuer the Inhabitants of the Land into your hands, and thou ſhalt driue them out before thee. Thou ſhalt make no couenant with them, nor with their Gods.* Which is more fully and plainly expreſſed by Moſes, Gods true Interpretour, *Deut. 7. 2. Thou ſhalt ſmite them, thou ſhalt vtterly deſtroy them : thou ſhalt make no couenant with them, nor haue compaſſion on them.*

Exo. 23. 31, 32.

Deut. 7. 2.

This precept ſeemes ſo oppoſite to Iſuahs proceedings, that many learned men deale now more vnciuilly with theſe Princes of Iſrael, then the rude multitude did then : and whereas the tumult was appeaſed vpon notice of a compact with the Gibeonites, theſe challenge them of no leſſe then folly and impietie for contracting.

I grant indeed, if we ſtrictly examine this action by thoſe words,

words, it appeares altogether vnlawfull, and therefore the Oath of performance of the promise, of no force. But when I finde that *Iosuah* (*Moses* his companion) and the Princes, (who had sate in Councell with *Moses*, and therefore knew the full purport of all those publike Lawes concerning the Canaanites,) when I finde that these, so soone after *Moses* death, make a league with these Nations, and maintaine it when they knew them to bee Canaanites; I should rather thinke we mistake the *serse of the Command*, then they maintaine or doe what is *contrarie to it*.

And so it is, whereas the Law (according to the letter) commands an vtter destruction of all the Canaanites, and forbids all contracts with them, or mercie to bee shewed to any one of them; If we search for the Law-giuers meaning, (which is the life of the Lawes, and must be collected from other Lawes, or practices allowed by the Law-giuer) wee shall finde, that there must bee some exceptions vnderstood.

In the twentieth of *Dent.* 10, 11. another precept is gi- *Deut. 20. 10,*
uen by God: *When thou comdest nigh to a Citie to fight against* 11.
it, then proclaime peace vnto it. And it shall bee, if it make thee
answer of peace, and open vnto thee, then it shall bee, that all the
people that is found therein shall be tributaries vnto thee, and shall
serue thee. This precept is generall, and includes as well the
Canaanites as other Nations.

From whence the Iewes haue a tradition, that the Israe-
lites, before they entred into Canaan, sent letters to all the chiefe
Cities of the Canaanites, offering peace vnto them. If this opi-
nion *de modo*, of the manner of offering peace holds not, yet it
seemes from hence, that peace was offered to them: and
that the Canaanites are not excluded in this place, may bee
gathered from the most generall consent of Interpretors,
who vnderstand this place of them also; as well as other
people.

Secondly, from *Moses* practice, who sent messengers to
Sihon, King of the Amorites, with words of peace.

Thirdly, from the rule of equitie, which requires, that as
no warre should be vndertaken, but on a iust title; so is it

not to beginne without a Proclamation of it; that so the delinquent may take notice of the wrongs which he hath done, and be without excuse vpon notice giuen, if he purchase not his peace.

Peace then may bee offered; and therefore giuen to the Canaanites, if they accept of it, vnlesse we will charge God with double dealing (as some forbear not to doe,) granting that he *offers peace heere to the Canaanites, to obserue the course of warre; but yet will not haue it giuen to them.* Let God bee true, any (euen of the Canaanites, that would accept the conditions of peace) might be partakers of it by vertue of this Law: whence it might fall out, that some of them might be preserued aliue, and lawfully contract with the Israelites; which thwarts the generall extirpation implied in the former precept.

That there be no contradiction in these two Lawes, wee must adde for our present occasion, *Bonaentures limitation,* Bonar. in 3. d. *Mandatum Dei est intelligendum quantum ad eos, qui sunt in-* 39. q. 3. ar. 3. *corrigibiles:* That precept, *Thou shalt make no covenant with them,* is not to be vnderstood indifferently of all, but of such as should stubbornely resist the Israelites: Such as would submit themselves, were exempted from that command.

Such were these Gibeonites; for whereas the rest of the inhabitants of Canaan, (hearing of the Israelites comming) instead of yeelding, had combin'd to the resisting of them; these yeeld themselves, content to be their seruants, so they may be secured of their liues. We haue then by this time acquitted *Josuah* of that wilfull sinne, wherewith he is charged, for doing contrarie to Gods command; and finde in him a lesson worthie obseruation, so highly to esteeme an Oath, as that euery seeming contradictorie passage of Scripture, should not presently disanull it. Let this one example of *Josuah* be instead of the prosecution of this point for the present, whilst I am to hasten on to what remaines; which, in the fourth place, is the Gibeonites infidelitie, and difference of religion.

Difference

Difference of Religion makes not an Oath voyd.

THough I ioyne issue with those, who exempt the Gibeonites from the Law of *utter destruction* by the Law of *peace-offering*, yet doe I not finde sufficient reasons on their part, for prooffe of their renouncing their Idolatrie, which is commonly maintained. To me it seemes, that these Ambassadors of the Gibeonites made no surrender of their religion, but continued still Idolaters, which I conceiue vpon these grounds. First, I finde, their treatie is onely for life; for the obtaining whereof, neither would these haue beene so sollicitous in asking it, nor the Israelites so scrupulous in granting, had there beene made a tender of embracing the Israelites religion. For the Lords armes were alwayes open, to receiue into his Church any repentant Idolater: and the Nations of the earth knew, it was *difference of religion* that gaue that aduantage to the Iewes, and made them keepe such distance with other people.

Secondly, Had they embraced the Israelites religion, they should haue beene, vpon this league, made brethren, and not seruants, partakers of the same priuiledges with the Israelites, protected by the same Lawes; and therefore, when they were discovered to bee of the Land of Canaan, neither might the people haue sought their destruction, nor the Princes inflict that punishment they did.

Thirdly, from the weake coniecture of the contrary; which is, because at the ninth verse, the Gibeonites tell *Iosuah*, *From a very farre Countrey are thy seruants come, because of the Name of the Lord thy God: for we haue heard the fame of him, and all that hee did in Egypt.* Hence is their argument drawne: but whilest we speake *English*, there is no appearance of it; we must lend them the *vulgar Latine*, and then it is, *In nomine Domini Dei tui.* Thy seruants are come in the name of the Lord thy God. Whether it be *in nomine*, or *ad nomen*, it skils not; the subsequent words expound their meaning. *We haue heard the fame of him, &c.* They came *then terrore compulsi, not spiritu instigati: compelled through*

Faith to be kept, euen with Idolaters or Heretikes.

fear of their ruine, not out of any holy motion of Gods Spirit : *Ad sanam Dei, non ad subiiciendum se Deo* : That they might escape the plagues that befall other Nations, not to embrace the Iewes religion.

Idolaters then they were when *Iosuah* contracted with them, and so continued till the discoverie of them ; which makes way for this question ; *Whether the Oath were not voyd by reason of this their Idolatrie* ? No question in those dayes ; but of late, both by the practice and doctrine often moued in generall and in *these*, which for the present I draw to this head, which is in the mouthes of most men in these dayes, and is this : *Whether faith be to be kept with Heretikes* ?

Molanus de
fide Heret.
seruand.
l. 1. c. 26.

l. 3. c. 10.

Rosweyd. dis-
sert. de fide
Her. ser. c. 13.

I was ready, vpon the naming of the question out of the generall cry of the world, to charge the Church, or at least the Faction of Rome, with the Negative. Whereas, desirous not to rely on a rumour, I finde one crying out with mee, *Valeat impia illa sententia, Far from vs bee that wicked opinion, that faith is not to be kept with Heretikes : nec attendamus cui, sed per quem iurauimus* ; let vs not so much consider to whom, as by whom we haue sworne. And againe, *Nullum scio Theologum, neq³ etiam clari nominis Iurisconsultum, quin conformiter doceant, fidem publicam Heretico seruandam esse* : I know neither Diuine nor Lawyer of any note, who doe not ioyntly teach, that publike faith is to be kept with Heretikes. I heare another taking vp the same note, but with a stricter limitation : *Nullus Theologici dux exercitus, quod equidem sciam, qui aliquid inter nos nomen decusq³ gessit, unquam dixit*. As farre as I know, there is not any prime Diuine, of any note amongst vs, that euer spake it. So that in stead of condemning them, we are put to proue them guiltie : a thing as needfull in this question, as the prooffe of the truth of it : since it will be too late to vrge the truth of doctrine, if by their wilie denyall of their guilt, we be drawne to try their practice. I shall therefore, with your patience, make it appeare vnto you, by the testimonies of a full Iurie, or more, that it is a doctrine in the Church of Rome, *That faith is not to be kept with Heretikes*.

That there is such a question on foot against them, and the
negative

negative is maintained by their Canonists, appears from these mens mouthes, who disclaime the opinion: whilest the one of them frees but onely some more famous Lawyers from it: the other acquits onely eminent Divines. But I will pardon them their Lawyers, and deale with them onely in Divines.

Simancha (a Bishop, I am sure, by the Title of his Booke, and therefore his opinion is to be taken for a Divines) saith,

^a *Ad pœnam quoq; Hereticorum pertinet, &c.* It is a part of the punishment and hatred due to Heretikes, that faith giuen to them, is not to be kept. The words are plaine enough, and wee neede not by deductions draw from him what wee would haue.

(a) *Ad pœnam quoq; Hereticorum pertinet, & Hereticorum odium, qd. fides illis data seruanda non sit.* Simanc. de Instit. Cathol.

Heare another. ^b *Est de iure gentium, seruare fidem hostibus:* It is the Law of Nations, that faith be kept with enemies. But yet, *Si causa fidei contrarium posceret, non esset seruanda:* If it be for the aduantage of religion to breake it, and they become Heretikes, it may be broken, and we may burne them without a Dispensation for our Oath.

(b) *Est de iure gentium, seruare fidem hostibus, ut seruare legatos in bello: tamen si causa fidei contrarium posceret, non esset seruandum: imo si corrupta dignitate, ex-urendi essent, neq; dispensatione opus esset.* Soto de Instit. & Iur.

But we may receiue against the testimonie of these men in generall, that reply that Swertius giues concerning Simancha in particular: ^c *Nosti Hispanum esse, &c.* Ye know they are Spaniards, and therefore immortal and sworne enemies to Heretikes: whence they may be pardoned, if after the nature of the Nation, they speake roughly. Let vs see then, if the temper of other Nations be more calme.

(c) *Fac ita sentire, [fidem non esse seruandam Hereticis]* Simancham. Nosti Hispanum esse, ac proinde coniuratum & æternum hæreseos hostem, & siquid durius gentis more dixerit, veniam merebitur. Sweett. de fid. Hæret. seru. ss. 9. (d) Andreas Philopetrus, aliàs Creswel contr. E. di. Eliz. (e) Deinde quest. in Comitibus male vel promissa vel constituta mutare studeat. Possen. tract. An expediat pacandæ Reip. admittere Hæret. ad colloquium.

An ^a Englishman (once tainted with Popisme) breaths the same spirit. *Quod si Principes, &c.* Subjects may, nay they are bound to depose their Hereticall Princes, to whom they haue sworne obedience. First then they are bound to breake their faith, which they had formerly giuen vnto them, because they are now become Hereticall.

(c) *Fac ita sentire, [fidem non esse seruandam Hereticis]* Simancham. Nosti Hispanum esse,

Italy giues the same tune from another note, whilest ^c *Pos-*

seruine

The doctrine of Rome breaketh faith made with Heretikes.

seuine perswades Stephen King of Poland, to reuoke his promise made vnto the Protestants of Poland, grounding his perswasion indeed vpon that, that it was absolutely vnlawfull for him to giue licence for Heretikes to enioy their possessions in his Dominion.

Cunerus de
Principis offic.
c. 10.

Vpon the same ground doth another from Germanie expostulate with the Low-Countrie Protestants, when they vrged their King for a toleration of religion. *Quid igitur Belga Principi vestro Catholico tam molesti estis? Why doe you thus molest your King? Why aske you, what God hath denyed him? Why require ye the toleration of that, which God forbids him to allow? Indeed heere is no mention of not keeping faith with Heretikes, no direct perswasion of the King to it; but yet heeres a ground layd for it. For by vertue of this, if hee hath once giuen his faith for tolerating of Heretikes, he must breake it, or sinne against Gods expresse command.*

Francis. Verō.
Apolog. pro
societat. Iesu.
part. 2. c. 15.

Nay, to instance in one Nation more; and that the most moderate among the Papists; a French-man, steeped in Iesuitisme, spitteth the same poyson. Francis Veron accounts it among the late Heresies of France, to say that subjects may not be free of their faith giuen to their Hereticall Princes.

(a) *Alu & con-
filio maxima
queq; geruntur.
Maiores nostri
semper sociorum
fidem recte
sancteq; seruauit,
etc. Fas est quā-
doq; publicae salu-
tis gratia, neq;
stare pactis, neq;
perfidis seruare
fidem. Bonfin.
rerū Hungar.
dec. 3. l. 6.*

But these are priuate persons; and the opinions of priuate men are not to bee accounted the doctrine of a Companie. Heare then some more eminent and publike maintaining of this position. *Iulian*, the Cardinall of S. Angelo, (who had beene President of the Councell of Basil, and Legate à latere to *Vlaodislaus*, King of Poland and Hungarie) hauing ministred the Oath for confirmation of a league betweene the King and the Turke, presently after, in the open Senate, makes a solempne Oration to perswade him to breake it; and amongst other, vseth these arguments: *Our ancestors* (speaking of the ancient Romanes) were faithfull to their friends, but cunningly would delude their perfidious enemies. *Cesar* for a Kingdome thought it lawfull to breake an Oath. And so concludes it lawfull for them, for the Church and publike good, to breake their faith giuen to a heathenish and perfidious Nation. Though *Bonfinius* make him there to mention a pre-contract
with

with the Christian Princes, and therefore by vertue of that their Oath was voyd, yet doth he condemne him of flat per-
iurie: so doth ^a *Aeneas Syluius*, Ep. 81. and ^b *Naucler*.

Hofius, a Cardinall too, and President of the Councell of *Trent*, in his Epistle to the King of *Poland*, an age after *Iulian*, vseth his Predecessors doctrine, and assures the King, (who had giuen his Oath to maintaine both Papists and Protestants) ^c that he is not bound to the obseruance of his Oath.

Would you haue more generall prooffe of it? When *Charles* the ninth of *France* had made a league with the Prince of *Condy*, the Iesuites did publikey maintaine in their Sermons, that faith was not to be kept with Heretikes. And *Sweertius*, beeing moued by *Plancius*, whether the Papists maintained not, That faith and allegiance were to be denied to an Hereticall Prince, replies, ^d *In confesso est, it is granted*, Nor was there euer yet any *Diuine* of note that denied it.

Nay, their Councels are not free: for it is manifest that the safe conducts that were giuen to *John Husse* and *Hierome* of *Prague*, were violated by the Councell of *Constance*. The like had bin done by the Councell of *Trent*, had not the Protestants beene instructed by their predecessors wofull experience, to suspect the pretence of their safe conduct. For (how faire and firme so euer the conduct appeares to the world) they had beforehand concluded of a tricke, by which they had seized vpon them, had they come, as appeares in the ^e *Historie* of the Councell of *Trent*, ad an. 1551.

Go we yet one step higher, euen to the infallible Oracle of *Rome*. I finde that ^f *Eugenius* the Pope is by some charged with that foule fact of *Vladislaus*. And in *Cochlaus* his *Historie*, l. 5. ad an. 2423. is registred Pope *Martins* Letter to *Alexander* Duke of *Lituania*, who had sworne to protect the *Hussites*, wherein he speaks plaine: & If thou hast vpon any motives promised to protect the *Hussites*; know, that thou couldst not giue thy faith to Heretikes, and that thou sinnest mortally if thou keepe it. We haue another register of *Clement* 7. his Letters to *Charles* the 5. for the rooting out of the *Moore*s *vabis*. *Cochleus Hist. Hussit. l. 5. an 1423.*

(a) *Aeneas Syl.*
Ep. 81.

(b) *Naucler. gen.*
49. an. 1443.

(c) *Nullius absoluti-
onis indigere
se ab hoc iura-
mento sibi certo
persuasum habe-
at. Ep. 197.*

*Sibi certo persua-
deat, quod cum
iuramentum non
sit vinculum ini-
quitiatis, nequa-
quam eo teneatur.*
Ep. 199.

(d) *In confesso
est, nec inuentus
est hactenus mag-
ni nominis Theo-
logus, qui non in
hanc sententiam
gerit. Sweet.
de fide Heret.
seruanda. fs.*

(e) *Histor.*
Concil. Trid.
ad an. 1551.

(f) *Palatina in
Eugenij vita.*
Naucler. Gen.
49. ad an. 1443.

(g) *Quod si tu
aliquo modo in-
ductus defensio-
nem eorum susci-
pere promissisti,
scito te dare fide
Hereticis non po-
tuisse, & peccare
mortaliter si ser-*

(a) Quodcumq;
iuramentum in
concilijs generali-
bus regni de non
expellendis infi-
delibus huiusmo-
di per te prestitū
relaxamus, ---
Non obstantibus
Constitutionibus
et Ordinationibus
Apostolicis, ac
privilegijs & sta-
tutis dictorū Re-
gum et princi-
patus iuramento
Confirmati ne A-
postolica, ut quā-
vis firmitate alia
roboratis, etiam si
caveatur ex-
presse, quod re-
laxatio iuramenti
huiusmodi peti, et
illa uti, & dictis
privilegijs derogari
nullatenus pos-
sit, &c. Ioseph.
Stephan. de
Unica Relig.
c. 22.

1 Sam. 5. 11.
Gen. 31. 53.
c. 26. 28.
c. 21. 23.
c. 14. 13.

out of Spaine, in ^a Ioseph Stephens tract de unica religione, c. 22. the contents whereof are, that he doth release him from all Oathes that he had made in his Parliaments, for not expulſing those Infidels, notwithstanding any Constitution Apostolicall, Priuiledges, Statutes, Oathes whatsoever, though ratified by the Sea of Rome, and with an expresse clause of excluding any Dispensation or Relaxation whatsoever.

I must confesse, some of them, when they come to handle the point, vtterly disclaime it in termes. But yet, if we take their whole discourse together, we shall finde it onely inuer-
ted. *Faith is to be kept with Heretikes*, say they: but they say againe, *Faith is not to be giuen to Heretikes*, unlesse upon vneui-
table extremities, for toleration of their religion. *Extra hunc casum*, it is repugnant to the lawes of God to tolerate. We may conclude then, *extra hunc casum*, there must bee no toleration. Therefore *no more faith*. Heere some are modest; others speake out, and proclaime it; which I might by their publike practises and writings make good, but that I haue trespassed too farre in so long a proöfe of their guiltinesse; yet this may be gained from hence, that you may suspect what-euer they professe: and from their disclaiming of the contrarie, rest satisfied with a briefe Proöfe, *That faith is to bee kept to Heretikes*.

Contracts are grounded on the Law of Nature, and no qualities in the person can alter them, but such as are not according to the Law. By vertue of this, *Iosuah* accounts him-
selfe bound to the Gibeonites: *Dauid* contracts with *Hiram*, *Moses* with the *Moabites*, *Iacob* with *Laban*, *Isaac* with *Abimelech*, *Abraham* with *Eshol* and *Aner*, the people of God with the enemies of God, true beleeuers with grosse *Idolaters*: wee may behold heere Idolatrie finding fauour in some of these leagues, and yet the firmnesse of the compacts neuer questioned. If these examples conclude not, (being the practice of men, and they subiect to error of fact) see God himselfe declaring his dislike of the violation of contracts, euen when religion is made a pretence.

Though it were out of his zeale to the children of Israel,
that

that *Saul* slew the *Gibeonites*, yet God reuengeth this Oath 2 Sam. 21. of *Josuah* on *Jury*, by three yeeres famine; on *Saul*, by the execution of his children. *Zedekiah* is carried Captiue into *Babylon*, for breaking his Oath made to the idolatrous King of *Babylon*. Heare God himselte expostulating and complaining of the hainousnesse of the fact. *Shall hee prosper? shall he escape that doth such things? or shall he breake the covenant, and bee deliuered? What? not breake this covenant made with an Idolater, with the enemy of the Iewes, by which the people of God become slaues to the enemies of God? Must true Religion giue way to Idolatrie, and Gods Seruice be ouerwhelmed with Gentilisme? This seemes to be a strong plea, where Religion stands at stake: and yet, (if a covenant be made, though to the preiudice of Religion) shall any man breake the covenant, and be deliuered? Man may happely perswade vs so, and hope for it; but if wee aske the Lords counsell, he giues vs his plaine answer, to all cases applyable, which here in particular he proclaimes to the King of Iudah. As I liue, saith the Lord, surely, in the place where the King dwelleth that made him King, whose Oath he despised, and whose Covenant he brake, euen with him, in the midst of Babylon shall he dye. Seeing hee despised the Oath, by breaking the Covenant, (when loe hee had giuen his hand) and hath done all these things, he shall not escape. Therefore thus saith the Lord God: As I liue, surely mine Oath that he hath despised, and my Covenant that he hath broken, euen it will I recompense vpon his own head. Can any man read these threatnings against Covenant-breakers with Idolaters, can he behold Gods vehemency in the cause, & think it free for him to maintain the contrarie? To such a one no prooffe can be made: to others, this may suffice that hath beene made: and therefore, hauing respect to your patience and the time allotted, I ha-
 then to speake somewhat of the third and last point, deduced out of the second generall branch of my Text; which is, a Quære, whether an Oath, being in it selfe lawfull, and of sufficient force, may not yet be dissolued.*

Ezech. 17.

Exod. 15.

Exod. 18.

Exod. 19.

Remission,
Irritation,
Dispensation.

I Finde amongst Casuists three wayes (for to those all other may be reduced) by which a man may bee freed of a *Promissorie Oath*: (for there is no question concerning an *Affertorie Oath*.) The first is *Remissio*, when the Oath is accepted, but that which was to bee done by vertue of the Oath, is either *remitted or changed into some other thing*: as in case a debtor sweare to his creditor to pay him ten pounds: if his creditor forgiue him the debt, or proffer to take somewhat else in lieu of it; vpon satisfying of his creditor, hee is acquitted of his Oath.

The second is *Irritatio*, when the Oath is made voyd by the *command of a Superiour*. Thus may a Father make voyd the Oath of his Childe, in those things which are derogatorie to the Fathers authoritie ouer him.

The third is *Dispensatio*, when the Oath, in it selfe firme and lawfull, yet, by the *interuening power of some other Superiour person*, is adiudged not to binde the swearer.

That the bond of an Oath, in things lawfull, may bee released by the two first meanes *Remissione et Irritatione*, is granted on all hands, and agreeable to truth. For in the first case, though the Oath hath a double obligation, the one to God, the other to man; and therefore it may seeme, that though man may release the obligatiō to himself, yet can he not free the swearer from his obligation to God, (which an English Casuist hath too rashly determined;) yet is it plaine, that *both obligations* are but *conditionall*; that to God, as the swearer stands bound to man; and that to man alwayes implyes *voluntatem recipiendi*, if he to whom the promise is made, will accept the thing promised. He then, to whom a promise is made, may release the other of his promise.

The doubt is onely concerning this later; whether by *Dispensation*, an Oath, in it selfe lawfull, may be made not to binde. The resolution whereof was made by *practice*, before it was questioned by way of *doctrine*.

Gregorie the 7. threatneth Philip King of France, to release his Subiects from their Oath of Alleagiance; practiseth it on Henry the third Emperour, on Boleslaus King of Poland.

Alexander

Baron. an.
1073.
Baron. an.
1076.
an. 1079.

Alexander the third frees the Germanes from their vowed obedience to *Fredericke*. *Clement* the seventh sends a full Dispensation to *Charles* the fifth, for all Oathes he had made to the Moores. *Pius* the 5. quits the English Catholikes of their obedience to *Queene Elizabeth*. And it is now growne so familiar, that let a Prince offend his Holinesse of Rome, not all the bonds of Religion or Nature are able to keepe his Subjects to him, if they want not force to curbe him.

an. 1160.

Ioseph. Steph.
de vnica Relig.

c. 22.

Camdeni an.

Eliza. an. 1570

It was not long ere the others, as well as the Pope, thought it a fit plea for their priuate aduantages; and therefore when they grew weary of conditions to which they had tyed themselves, and hauing no respect to conscience, but to their benefit, they dispatch to Rome for Dispensations for their Oathes. *Becket* of *Canterburie* procures a Dispensation for his Oath of obedience to his King. King *John* sues for a release from the liberties which he had promised to his Barons. *Henry* the third purchaseth a Dispensation for an Oath giuen in *Oxford* Parliament. *Philip* the second of *Spaine*, that hee might be released from his Oath of keeping the Low-coun-
treys mens lawes and priuiledges.

Gaspar Gaspa-
rius de Iure
belli Belgici,

p. 28.

The frequent practice hereof, brought it at length to a publike doctrine, that Oathes may bee dispensed with, and is maintained by *Selua* with no lesse then 104. arguments.

Hath there beene so faire a course for shifting off promises, and would *Iosuah* suffer his people to grone vnder a rash Oath? Had they not a high Priest that might haue pronounced them free? The same power it is likely was there; but *Tostatus* tells vs, that those good men in the Old Testament knew little of the bonds of Oathes and Vowes: for that age was rude, as appeares by *Iosuah* and *Iephthah*. They knew little, it seemes, but of these strange illusions, not of the obligation of Oathes: their constancie in maintaining them, argues deepe apprehension of the force of them.

Tost. in Matt.

14. 9. 32.

Oathes and Contracts ratified by the name of God, are not the Contracts of men, but of God, when made: therefore *David* styles his Contract with *Jonathan*, a Covenant of the Lord. Thou hast brought thy seruant into a Covenant of the

1 Sam. 20. 8

Lord with thee. Their Oath which passed mutually between
 (a) 2 Sam. 21. 7. them, is called the *Lords Oath*; and a *David* spared *Mephibosheth* the sonne of *Jonathan*, because of the *Lords Oath* betweene them. Why the *Lords Contract*, the *Lords Oath*, but because by his name the Oath is giuen, the Couenant sealed, and to him promised?

(b) Mat. 5. 33. Wherefore Christ calls for the performance of them, ^b *Thou shalt not forswear thy selfe, but shalt performe vnto the Lord thine Oath.* He robs God of his honour, dispossesseth him of his peculiar right, that shall interpose for altering an Oath, and disable that wherein God is appointed a witnesse of the firmenesse of it.

(c) *Equidem lege nature me tenebor, quam nullo humane indulgentie privilegio, nullius clementie beneficio, nulla potentis auctoritate dissolui posse, clamat omnis Theologorum schola, Canonici Iuris resonant subsellia.* Roswyd. de fide heret. seru. c. 7. Again, the law of keeping an Oath, whereof there is no impeachment in the matter, is naturall: for the violation thereof is plaine periurie, and that simply euill. The bond of which law is so sure, that *Aquinas* concludes, *In legem naturalem non cadit indulgentia Diuina*: God himselfe cannot dispense with it. He forgets then his man-hood, and Lucifer-like exalts himselfe aboue God, that shall put in a Dispensation, and dissolue that which God himselfe cannot alter.

(d) *Quid igitur? Nunquamne Pontifex iurandi quæ nexu soluit?* Soluit sane. The consideration whereof makes *Roswyd* bold to say, ^c *Si dicam nulla pacta; ff* should say, that the Pope cannot break any Contracts or Oathes, the Law of Nature should be my plea, in whose protection stands the sanctitie of an Oath; concerning which, the whole schoole of Diuines proclaime, and the Canonists testifie, that neither any humane priuiledge, nor fauour, nor the command of any is able to dissolue it.

(e) *Iuramenta obligant iure Diuino et Naturali.* Valent. 1. 3. A man would thinke it were enough to secure vs of no intent of admitting a relaxation; and yet this cannot hinder, but that the Pope may interpose. For hee goes on: ^d *Quid*

(f) *De hoc certum est apud Theologos, Nulla in potestate humana posse in lege Nature dispensare, sicut neq. in Diuina.* Idem to. 2. And, ^e *De hoc certum est, &c.* It is certaine among Diuines, that no humane power can dispense in the Law of Nature, as also.

also neither in the Law of God. There is the indispensabilitie of Oathes. And yet he ioynes on to his former words, these following; ^a *Neq; ex hoc sequitur, &c.* Nor doth it yet follow, that the Church cannot dispence with Oathes. What their turnings and windings, what their exceptions are in this question, and how prosecuted, neither the time nor place will giue leaue to shew. Thus much is already apparent, that the Pope, who (by ^b *Baldus* direction) should proceed like God, who is truth it selfe, and so maintaine all truth, treads in the steps of Satan the father of lyes, and vndermines the foundation of the truth of all humane commerce.

(a) *Neq; ex hoc sequitur, Ecclesia non posse dispensare super ea. Id. 10. 3. disp. 6. q. 7. p. 4. ad. 4.*
(b) *Papa debet procedere tanquam Deus, qui est veritas. Bald.*

Let vs take vp the patterne, which he reiects, and labour to imitate it in the whole course of our liues; that there may be truth in our words, truth in all our actions; and (when we haue engaged the name of God for performance of this truth) a readinesse in vs rather to lose goods and liues, then dishonour God by preferuing them: that so after this life, we may enioy him who is life and truth. To whom, with the Father and the Holy Ghost, three persons, one only true God, be ascribed all Honour and Glorie, now and for euer,
Amen.

FINIS.
